

# User Access Guide

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## MAPS and SEPS

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# 1. Introduction

## Background

In March 2023, the *National Gas Rules (Gas Pipelines) Amendment Rules 2023* (SA) (**Amendment Rule**) amended the National Gas Law (**NGL**), which is the Schedule to the *National Gas (South Australia) Act 2008* (SA).

The Amendment Rule amended the National Gas Rules (**NGR**) by, among other changes, amending the obligations of pipeline operators to have a User Access Guide and amended the Access Negotiation Framework.

Rule 105C of the NGR requires a service provider of a non-scheme pipeline to develop, maintain and publish on its website a user access guide that contains certain prescribed information in relation to the non-scheme pipeline.

Epic Energy is the service provider for two non-scheme pipelines: the Moomba to Adelaide Pipeline System (**MAPS**) and the South East Pipeline System (**SEPS**).

Epic Energy is committed to ensuring it can safely and reliably meet customer needs for gas transportation, and to ensuring it provides services that meet the commercial needs of prospective users.

If prospective users are interested in acquiring gas transportation services from Epic Energy on either the MAPS or SEPS they can either contact Epic Energy's Head of Commercial to discuss their transportation service requirements in an informal negotiation process or they can commence a formal access request as part of the new Part 11 of the NGR Access Negotiation Framework process explained further in this User Access Guide.

## Purpose

This User Access Guide is published by Epic Energy for MAPS and SEPS pursuant to rule 105C of the NGR. Under the NGR this user access guide must:

- Identify the service provider for the non-scheme pipeline;
- Set out the contact details for an officer of the service provider to whom preliminary enquiries and access requests can be sent;
- Describe the process for making an access request;
- Describe the information to be included with the access request (pursuant to Rule 105C(7));
- Describe the arrangement for undertaking further investigations;

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- Explain how the service provider will deal with and use any confidential information exchanged between the parties;
- Describe the process for preparing an access offer and for requesting negotiations under the rules in relation to an access offer;
- Include a statement of the obligation to negotiate in good faith under section 148D of the National Gas Law (NGL) and the right to refer an access dispute to arbitration under Chapter 5 of the NGL;
- Describe the arrangements in rule of 105G for the exchange of information under Part 11; and
- Include the interconnection policy.

## Scope

This User Access Guide relates to access to services on MAPS and SEPS under Part 11 of the NGR. However, much of the information provided is also useful for those choosing to engage with Epic Energy outside of that formal process.

## Overview

This User Access Guide is set out in seven sections:

- **Section 1** (Introduction) sets out the background to, and an overview of, this User Access Guide including contact details;
- **Section 2** (MAPS) sets out an overview of MAPS;
- **Section 3** (SEPS) sets out an overview of SEPS;
- **Section 4** (Access Requests) sets out the procedures for a prospective user to make an access request (including the ability to request further investigations by Epic Energy);
- **Section 5** (Further investigations) sets out the procedures for Epic Energy to undertake further investigations in relation to a preliminary enquiry or access request;
- **Section 6** (Access Offer) sets out the pipeline service requirements and processes for Epic Energy to make, and for the prospective user to respond to, an offer in relation to access to a MAPS or SEPS service; and
- **Section 7** (Negotiations) sets out the processes for initiating, undertaking and ending negotiations between a prospective user and Epic Energy in relation to access to a MAPS or SEPS service.
- **Section 8** (Interconnection Policy) sets out Epic Energy's interconnection policy.

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## Definitions

Acronym/Term	Meaning/definition
<b>Access Dispute</b>	A dispute between a prospective user and Epic Energy in relation to one or more aspects of access to a MAPS or SEPS service.
<b>AEMC</b>	Australian Energy Market Commission
<b>AER</b>	Australian Energy Regulator
<b>Epic Energy</b>	Epic Energy South Australia Pty Limited
<b>GTA</b>	Gas Transportation Agreement
<b>MAPS</b>	Moomba to Adelaide Pipeline System
<b>NGL</b>	National Gas Law, which is the Schedule to the <i>National Gas (South Australia) Act 2008</i> (SA)
<b>NGR</b>	National Gas Rules (see the AEMC's website for latest version)
<b>SEPS</b>	South East Pipeline System

## Contact Details

For any queries about this User Access Guide or to make preliminary enquiries and access requests to either the MAPS or SEPS, please contact:

Paul Williamson – Head of Commercial

Phone: 0421 035 892

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Email: [commercial@epic.com.au](mailto:commercial@epic.com.au)

Street Address: Level 6, 70 Franklin Street, Adelaide, South Australia, 5000.

Website: [www.epicenergy.com.au](http://www.epicenergy.com.au)

## 2. MAPS

### Overview

MAPS is one of Australia's largest pipeline systems at over 1,100 kilometres in length. MAPS receives supply from all major Eastern Australia gas supply basins, including the Cooper Basin production and processing facilities at Moomba, the coal seam gas fields of south east Queensland via the South West Queensland Pipeline and Victorian gas supply basins via a connection to the SEAGas pipeline.

### Pipeline System/Description

MAPS features:

- A 781 kilometre bi-directional mainline pipeline between Moomba to Adelaide;
- 326 km of pipeline laterals, including a 77.8 km pipeline lateral from the mainline to Port Pirie and Whyalla and a 38.7 km lateral from the mainline to Angaston; and
- 9 compressor stations, 6 operational, 3 decommissioned.

A map of MAPS is provided as part of the Pipeline Information on Epic Energy's website along with a list of receipt and delivery points. The current nameplate capacity and capacity that is available for sale is also included in the Pipeline Information.

## 3. SEPS

### Overview

SEPS is a 82km long pipeline system connecting the SEAGas pipeline to Snuggery and Mouth Gambier in south eastern South Australia.

### Pipeline System/Description

SEPS features:

- A 82km pipeline comprising two mainline pipelines (Katnook to Snuggery and Glencoe to Mount Gambier) and two lateral pipelines (Katnook to Penola and Kalangadoo to Nangwarry).

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A map of SEPS is provided as part of the Pipeline Information on Epic Energy's website along with a list of receipt and delivery points.

## 4. Access Requests

Prospective users interested in acquiring gas transportation services from Epic Energy on either the MAPS or SEPS, can do so using one of three options available:

1. Contact Epic Energy's Head of Commercial via the contact details outlined in Section 1 in this User Access Guide, to commence informal discussions on the prospective user's transportation service requirements; or
2. Complete and submit to Epic Energy via the contact details outlined in Section 1 in this User Access Guide, a Preliminary Enquiry Form to commence discussions on the prospective user's transportation service requirements; or
3. Prepare and submit a formal Access Request Form via the contact details outlined in Section 1 in this User Access Guide as part of the new Part 11 Access Request process.

Further details are provided below.

### Informal Access Request

Epic Energy is committed to working collaboratively with its existing and prospective users in understanding their gas transportation service requirements and, where able, developing services that best meet those requirements. Epic Energy encourages prospective users to contact Epic Energy's Head of Commercial in the first instance with their access and transportation service enquiries.

### Preliminary Enquiries

A prospective user may make a Preliminary Enquiry about access to, and availability of, services on MAPS or SEPS under Part 11 of the NGR at any time. To do so, the prospective user must complete Epic Energy's Preliminary Enquiry Form. A copy of the Preliminary Enquiry Form is available on Epic Energy's website.

Epic Energy must respond to your Preliminary Enquiry **within 10 business days**. This response will advise as to whether Epic Energy are able to provide the services that you have requested, or whether further investigations are required. This response will also outline when Epic Energy will provide an offer.

If you request it, Epic Energy will conduct further investigations based on your preliminary enquiry before you make a formal access request. Further Investigations are outlined in Part 5 below.

A prospective user is not required to make a Preliminary Enquiry before making an Access Request.

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If an offer is made in response to a preliminary enquiry, you will not be required to submit an Access Request Form.

## Part 11 Access Request

### *How to make an Access Request*

A prospective user may make a formal Access Request for services on MAPS or SEPS under Part 11 of the NGR at any time. To do so, the prospective user must complete Epic Energy's Access Request Form available on Epic Energy's website. The Access Request Form requires the prospective user to input specific information on the prospective user and their gas transportation and usage requirements. Information requested in the Access Request Form includes:

- customer and pipeline access details;
- the reason for the request including services required, date of service, term of contract and receipt/delivery points;
- the nature of load and load profile (if known);
- flow rates including maximum daily and hourly quantities, average and future flows including peak daily flow, temperature, required delivery pressure and gas specification;
- if a new receipt or delivery point is required, particulars including gas custody transfer point, operational days per year, seasonal/shutdown periods, control signals required, pipeline/station access restrictions and land area/ownership restrictions; and
- the appropriate credit support.

If prospective users have any queries about the Access Request Form or providing any of the information listed on the form they are encouraged to contact Epic Energy to discuss.

### *Amendment of access request*

A prospective user may amend the details of an Access Request Form with Epic Energy's consent. To do so, the prospective user should provide Epic Energy with an amended Access Request Form noting that this is an amendment of an earlier Access Request.

### *Receipt of Access Request*

Epic Energy will acknowledge by email or mail once an Access Request has been received noting the date and time the Access Request Form was received.

Epic Energy must acknowledge the receipt of an Access Request **within 5 business days**.

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Further, Epic Energy will review the submitted Access Request Form and advise the prospective user **within 5 business days** if further information is required from the prospective user to complete the access request.

If further information is required, Epic Energy will discuss what information is required and request the prospective user to resubmit the Access Request Form.

The date and time of the Access Request Form being received by Epic Energy will be the date and time that the last complete and valid Access Request Form is received by Epic Energy.

### ***Further investigations***

Epic Energy will contact the prospective user via email or mail, on the contact details provided by the prospective user, **within 10 business days** of receipt of the complete and valid Access Request Form if Epic Energy needs to undertake further investigations in relation to the prospective user's access request. Further investigations are discussed in detail in section 5 below.

### **Confidentiality**

When submitting a Preliminary Enquiry Form or an Access Request Form, prospective users will also need to sign and submit a copy of Epic Energy's Confidentiality Agreement. The Confidentiality Agreement sets out how confidential information will be treated between the parties. A copy of the Confidentiality Agreement can be found on Epic Energy's website.

Except for information already in the public domain at the time it was received by Epic Energy, Epic Energy will:

- treat all information received from a prospective user in respect of a preliminary enquiry or access request as confidential;
- only use or reproduce such information for the purpose for which it was disclosed; and
- not disclose such information except:
  - (a) to the scheme administrator (the AER) in an Access Dispute notice;
  - (b) to the arbitrator in the course of an arbitration;
  - (c) with the consent of the other party;
  - (d) to a professional or other adviser of the party who agrees with the party to maintain the confidentiality of the confidential information;
  - (e) if it is required by, or necessary for the purposes of, the NGR or the NGL;
  - (f) if the disclosure is in accordance with an order made or a subpoena issued by a court of competent jurisdiction; or

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- (g) if the disclosure is authorised or required by a law of a participating jurisdiction or required by a competent regulatory body, and the person making the disclosure gives written details of the disclosure (including an explanation of the reasons for the disclosure) to the other party.

### Preliminary Enquiries and Access Requests outside of Part 11 of the NGR

Until a prospective user has completed Epic Energy's Preliminary Enquiry Form or Access Request Form, Epic Energy will treat any other correspondence regarding access to the MAPS or SEPS as being outside of Part 11 of the NGR.

## 5. Further investigations

### Why further investigations may be required

Following receipt of a preliminary enquiry or a complete and valid Access Request Form, Epic Energy will review the request and determine whether further investigations are required. Examples of where further investigations may be required to be undertaken by Epic Energy include where the service/s requested by the prospective user requires one or more of the following:

- Pipeline modelling, to confirm the impact of a requested service on the operation of the pipeline;
- A new receipt or delivery point;
- A new lateral;
- Looping to expand the pipeline capacity;
- Additional compression to expand the pipeline capacity or provide a higher delivery pressure to the prospective user;
- An existing receipt or delivery point needs to be upgraded or expanded.

If Epic Energy needs to undertake further investigations in response to an access request for services on MAPS or SEPS, Epic Energy will notify the prospective user by email or mail, on the contact details provided by the prospective user, **within 10 business days** of receiving a complete and valid Access Request Form. Epic Energy will also provide to the prospective user a brief description/scope of what further investigations are required to be undertaken.

Please note that the timeframe required to complete further investigations will be dependent on the size and complexity of any works required to meet the prospective user's requirements. The investigations may require the engagement of external pipeline modelling and design engineers in addition to engaging with fabrication and construction companies to provide sufficient information on lead times and costs.

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## Options for Prospective Users

On receipt of the notice from Epic Energy that further investigations are required in respect of a prospective user's Access Request, the prospective user may:

- withdraw its Access Request, by notifying Epic Energy via email or letter;
- with Epic Energy's consent, amend its Access Request by completing a new Access Request Form; or
- proceed with Epic Energy undertaking further investigations, by notifying Epic Energy via email or letter.

## Costs of further investigations

Following notification from the prospective user that the prospective user wishes for Epic Energy to undertake the further investigations, Epic Energy will in good faith negotiate with the prospective user the terms and conditions on which the further investigations will be carried out, including:

- the basis for determining reasonable costs of the further investigations to be paid by the prospective user; and
- the timeframe for conducting the further investigations.

Epic Energy will prepare an agreement setting out the terms and conditions under which the further investigations are to be conducted. Epic Energy will not undertake any further investigations until the agreement has been signed by all parties.

## Completion of Further Investigations

Following the completion of further investigations Epic Energy will provide the prospective user with a report summarising the outcomes of the further investigations. After receipt of that report, the prospective user may:

- withdraw its Access Request, by notifying Epic Energy via email or mail;
- amend its Access Request, by completing a new Access Request Form; or
- request Epic Energy to make an access offer in accordance with section 6 below.

## 6. Access Offer

### Making an access offer

Epic Energy will prepare and make an access offer to a prospective user after:

- receiving a valid Access Request Form; and

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- after completing any further investigations that are required.

An access offer may comprise, depending on the access request received, the following:

- A copy of the standard MAPS or SEPS GTA;
- A copy of the standard MAPS or SEPS GTA, amended to reflect the transportation service or services required; or
- A new schedule or amendment to an existing MAPS or SEPS GTA.

The access offer will be made in writing and will either be emailed or mailed to the prospective user at the contact details provided:

- if no further investigations are required, **within 20 business days** of receiving a complete and valid Access Request or as agreed with the prospective user, or
- if further investigations are required, **within 60 business days** or as agreed with the prospective user.

### Inclusions in an Access Offer

An Access Offer will include:

- The terms and conditions on which Epic Energy offers to make the pipeline service or services available;
- Contain the details of any works to be undertaken by Epic Energy;
- Contain the details of any works to be undertaken by the prospective user;
- Contain any applicable technical and performance specifications;
- Will be in a form capable of acceptance by the user or prospective user so as to constitute a new access contract or form part of an existing access contract.

### Accepting an access offer

If the prospective user wishes to accept the access offer the prospective user must execute and return a minimum of 2 copies, or as otherwise requested by Epic Energy, of the access offer to Epic Energy within 10 business days of receipt.

### Exemptions

Epic Energy is not required to make an access offer if:

- The prospective user's access request has been withdrawn;

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- Epic Energy concludes that it is not technically feasible or not consistent with the safe and reliable operation of the pipeline to provide the service requested; or
- It requires an extension of MAPS or SEPS.

If Epic Energy is unable to make an access offer because the access offer is not technically feasible or not consistent with safe and reliable operation of the pipeline, Epic Energy will notify the prospective user via email or mail the reasons why it is unable to provide the requested service and whether it anticipates it may be able to provide the requested service sometime in the future.

## 7. Negotiations

### Commencing negotiations following an Access Request

A prospective user who has made an access request may notify Epic Energy in writing that it wishes to commence negotiations in relation to the access request, including in relation to:

- whether access can be granted; and
- the price and other terms and conditions of Epic Energy's access offer.

A negotiation notification from a prospective user must state whether the prospective user wishes to undertake negotiations:

- under Part 11 of the NGR, in which case rules 105F ('Negotiations') and 105G ('Access negotiation information') of the NGR will apply; or
- outside of Part 11 of the NGR, in which case the above rules will not apply (the parties may however agree to separate rules for the negotiations).

Before commencing negotiations the parties must agree to the following:

- the parties to the negotiations;
- the timetable for negotiations;
- what services are to be in the subject of the negotiations; and
- the confidentiality arrangements for the negotiations (the confidentiality provisions in rules the NGR will apply to negotiations under Part 11 of the NGR).

### Duty to negotiate in good faith

Section 148D of the NGL imposes a duty on both Epic Energy and the prospective user to undertake all negotiations in respect of access to a pipeline service in good faith.

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## Information

A prospective user who has requested negotiations under Part 11 of the NGR may by notice to Epic Energy request that Epic Energy provide to the prospective user certain 'access offer information' and/or 'access negotiation information' (both as defined by rule 105G of the NGR) in relation to an access offer made to the prospective user.

Epic Energy will provide the requested information to the prospective user within 15 business days of the information request being received by Epic Energy, or as otherwise agreed between the parties.

Further requests for information will be treated separately and in the same manner.

Epic Energy may also, by notice to the prospective user, request 'access negotiation information' (as defined by rule 105G of the NGR) from the prospective user or other parties to the negotiation, which must be provided to Epic Energy within 15 business days after the prospective user receives the information request or as otherwise agreed.

Please note however, that Epic Energy is not required to provide any information where:

- to do so would breach a confidentiality obligation owed in respect of that information to an unrelated third party and the third party has not given consent to the disclosure despite reasonable efforts having been made by Epic Energy to obtain that consent; or
- the information is subject to, or would disclose other information subject to, legal professional privilege.

## End of negotiations

Negotiations may be terminated due to any of the following:

- the prospective user has decided to withdraw the access request;
- the prospective user and Epic Energy have agreed terms and conditions for access to services on MAPS or SEPS; or
- the Access Dispute the subject of the negotiations is referred to arbitration under section 152 of the NGL.

## Referral to arbitration

A prospective user or Epic Energy may refer an Access Dispute to arbitration Chapter 5 of the NGL. This referral is initiated by the prospective user or Epic Energy providing a notice to the AER under section 152 of the NGL that an Access Dispute exists. An arbitration between the parties is governed by applicable provisions of the NGL and Part 12 of the NGR.

An Access Dispute is taken to exist if:

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- A prospective user disagrees with any of the responses provided by Epic Energy in response to an Access Request; or
- The timetable for negotiations is not agreed within a reasonable time; or
- An agreement is not reached in accordance with the timetable for negotiations.

## 8. Interconnection Policy

Rule 39 of the NGR requires that Epic Energy must develop and maintain an interconnection policy. This policy must relate to the Principles of Interconnection as set out in Part 6 of the NGR.

The Interconnection Policy must:

- set out information about the right to interconnect to the pipeline in accordance with the pipeline interconnection principles; and
- describe the interconnection process, starting at the application stage through to the point of commencing operations using an interconnection; and
- set out the information to be provided in an application by a person seeking to establish an interconnection, and the information that each party will then provide to each other in the course of the process associated with establishing an interconnection; and
- provide a link to any of the service provider's policies that are relevant to establishing an interconnection; and
- include a description of any technical, safety or reliability principles, requirements or processes that the service provider will use to assess an interconnection application; and
- set out information about how interconnection fees will be calculated and recovered (taking into account the requirements under rule 38(3)); and
- set out the standard terms and conditions of any connection agreement that the service provider may require an interconnecting party to enter into.

Epic Energy's Interconnection Policy can be found at Appendix 1 to this User Access Guide. The standard terms and conditions of any connection agreement can be found at Appendix 2.

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## Appendix 1: Interconnection Policy

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**Document:**

Epic Energy South Australia

Document Title: Interconnection Policy

Document No: E-00-000-PO-G-029

# Epic Energy

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## Policy

Document Number IP.20231222

## Interconnection Policy

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**Printed versions of this document are not controlled and can not be relied upon.**

**Effective Date: 22 December 2023**

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## 1 Introduction

### 1.1 Definitions and regulatory references

Capitalised terms used in this document have the meanings given in clause 1.6 below.

Any references in this document to sections of the NEL, or clauses or parts of the NGR, are references to the sections, clauses or parts as at the effective date of this document, and so could potentially change after that date.

### 1.2 Background

The NGL requires Epic Energy, as the owner and operator of a pipeline, to comply with the Pipeline Interconnection Principles<sup>1</sup>.

The Pipeline Interconnection Principles are set out in the NGR<sup>2</sup> and require Epic Energy to publish a policy, as part of its User Access Guide<sup>3</sup>, that relates to those Pipeline Interconnection Principles.

### 1.3 Purpose and effective date

This Interconnection Policy is the policy that applies to each of the Epic Pipelines for the purposes of the NGR.

This Interconnection Policy is effective on and from the date stipulated on the front page of this Interconnection Policy.

### 1.4 Scope

This Interconnection Policy applies to any person seeking to connect a facility or a pipeline to an Epic Pipeline.

Epic Energy may amend, vary or replace this Interconnection Policy from time to time. An amended, varied or replaced Interconnection Policy will take effect when published on the Epic Energy website at [epicenergy.com.au](http://epicenergy.com.au) (or, if later, as stated in the amended, varied or replaced Interconnection Policy).

Neither the Pipeline Interconnection Principles, nor this Interconnection Policy, limit or derogate from any requirement to gain any permission or authorisation that applies under the NGL or the NGR in relation to making a connection to an Epic Pipeline.

### 1.5 Reference Documentation

Tabled below is the list of relevant NGL and NGR documentation.

Document	Document Source
<i>National Gas (SA) ACT 2008</i>	<a href="https://www.legislation.sa.gov.au">https://www.legislation.sa.gov.au</a>
<i>National Gas (SA) Regulations 2008</i>	<a href="https://www.legislation.sa.gov.au">https://www.legislation.sa.gov.au</a>

<sup>1</sup> NGL, section 136.

<sup>2</sup> In Part 6.

<sup>3</sup> NGR, rule 39(3).

Document	Document Source
National Gas Rules	<a href="https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/current">https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/current</a>

**Note:** document versions change regularly.

## 1.6 Terms

Term	Definition
Access Request Form	The access request form set out, or referenced, in the User Access Guide.
Delivery Point	Epic Energy owned and operated pressure regulation and meter station and where applicable compression where gas is supplied to a user of the pipeline system
Epic Energy	Epic Energy South Australia Pty Ltd (ABN 54 068 599 815)
Epic Pipeline	Depending on the context, the MAPS or the SEPS
MAPS	Moomba to Adelaide Pipeline
NGL	National Gas Law
NGR	National Gas Rules
OTSA	Operational Transportation Service Agreement
Pipeline Interconnection Principles	The 'pipeline interconnection principles' set out in Part 6 of the NGR.
Receipt Point	Epic Energy owned and operated pressure regulation and meter station and where applicable compression where gas is supplied by a user or users into the pipeline system
SEPS	South East Pipeline System
User Access Guide	The 'user access guide' published by Epic Energy in relation to the Epic Pipelines

## 2 Principles of, and process for, interconnection

### 2.1 The right to interconnect to an Epic Pipeline<sup>4</sup>

2.1.1 A person (referred to in this Interconnection Policy as a Proponent) has a right to connect a facility or a pipeline to an Epic Pipeline where the following conditions<sup>5</sup> are met:

- (a) it is technically feasible and consistent with the safe and reliable operation of the relevant Epic Pipeline; and
- (b) the Proponent is prepared to fund the costs associated with making the interconnection.

2.1.2 However, nothing in this Interconnection Policy prohibits a Proponent from reaching an alternative agreement with Epic Energy to fund an interconnection.

2.1.3 In that regard, a Proponent has an option to:

- (a) construct, operate and maintain an interconnection at its own cost (option A); or
- (b) have Epic Energy do so (option B); or
- (c) proceed with a combination of option A and option B if both the Proponent and Epic Energy:
  - will own equipment or infrastructure associated with the interconnection; or
  - agree to share the costs and responsibilities associated with the interconnection.<sup>6</sup>

2.1.4 Epic Energy reserves the right to refuse any application made under this Interconnection Policy where the requirements of clause 2.1.1(a) are not satisfied.

### 2.2 Interconnection standard

2.2.1 If a Proponent seeks to develop an interconnection itself, it must<sup>7</sup>:

- (a) do so in accordance with good industry practice; and
- (b) comply with all standards and legislation that relate to the establishment and ongoing operation of the interconnection; and
- (c) comply with all reasonable technical, safety and reliability requirements requested by Epic Energy, and outlined in this Interconnection Policy and/or as may requested by Epic Energy.

## 3 Process for seeking an interconnection to an Epic Pipeline<sup>8</sup>

3.1 The nature and extent of each interconnection will differ from each other interconnection for a multitude of reasons. Those reasons will include such things as:

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<sup>4</sup> NGR, rule 39(2)(a)

<sup>5</sup> NGR, rule 37

<sup>6</sup> NGR, rule 38(1)

<sup>7</sup> NGR, rule 38(2)

<sup>8</sup> NGR, rule 39(2)(b)

- 3.1.1 the particular Epic Pipeline in question (as the pipelines are materially different to each other);
  - 3.1.2 the type of facility or pipeline that the Proponent seeks to connect;
  - 3.1.3 whether that facility or pipeline is upstream or downstream of the proposed interconnection point on the Epic Pipeline; and
  - 3.1.4 the geographic location in question.
- 3.2 The differences between the Epic Pipelines, the types of interconnections, the types of facilities or pipelines that a Proponent may seek to connect to an Epic Pipeline, and safety and technical requirements, means that there will be varying technical requirements between proposed interconnections.
- 3.3 This section describes the process for seeking an interconnection with an Epic Pipeline, but is to be read in the context of, and subject to, the above explanation.
- 3.3.1 Application Stage
    - (a) The Proponent makes contact with Epic Energy and, using the Access Request Form, provides details of the proposed commercial concept and the Proponent's operational requirements.<sup>9</sup> (Also, see additional requirements under clause 4.1 below.)
    - (b) A mutual confidentiality agreement is entered into between the Proponent and Epic Energy to protect the confidential information of both parties.
    - (c) A high level scope of works is developed by Epic Energy in accordance with the Access Request Form and any further information that may be requested by Epic Energy and provided by the Proponent.
  - 3.3.2 Concept Stage
    - (a) Epic Energy's engineering department prepares a concept selection report to assess the merits of various interconnection options.
    - (b) Epic Energy will set out each available interconnection option as well as indicating a preferred interconnection option.
    - (c) An initial cost estimate for each option to connect is prepared by Epic Energy and provided to the Proponent.
    - (d) A cost estimate is non-binding unless specifically indicated by Epic Energy to be binding.
  - 3.3.3 FEED Stage
    - (a) The proponent is to advise Epic Energy of their preferred concept.
    - (b) The selected concept(s) is (are) taken to front end engineering and design by Epic Energy to determine capital costs, subject to all further input regarding design as may be requested by Epic Energy being provided by the Proponent.
    - (c) An execution plan is developed by Epic Energy including proposed timing of the interconnection and procurement strategies.
  - 3.3.4 Negotiation Stage (May be completed in conjunction with FEED Stage)

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<sup>9</sup> NGR, rule 39(2)(c)

- (a) EPC contract(s) is (are) negotiated by Epic Energy and/or the Proponent (as applicable).
- (b) An interconnection agreement is negotiated between Epic Energy and the Proponent.
- (c) A gas transportation agreement (to enable gas to be delivered or received at or through the interconnection point) is negotiated between Epic Energy and the Proponent.
- (d) Land access rights that Epic Energy may require, and any other associated agreements, are negotiated between Epic Energy and each land rights holder.
- (e) Epic Energy makes a connection offer which will be subject to conditions such as obtaining all approvals that may be listed in the connection offer.
- (f) The Proponent accepts the connection offer and enters into the Interconnection Agreement, and all other required legal agreements, with Epic Energy.
- (g) The parties obtain all necessary approvals for the works to be carried out by them respectively.

3.3.5 Build Stage (in accordance with the interconnection agreement)

3.3.6 Commissioning Stage (in accordance with the interconnection agreement)

3.3.7 Commencement of Operations (in accordance with the interconnection agreement)

3.3.8 The parties comply with ongoing obligations under the interconnection agreement, gas transportation agreement, any other agreements, and as required by law.

3.3.9 Payment of interconnection application assessment charges may be considered in determining applicable interconnection fees.

3.3.10 During the Application Stage and prior to Epic Energy and the Proponent entering into an interconnection agreement, all costs associated with concept development, design, and any front end engineering and construction, will be required to be funded by the Proponent in accordance with Epic Energy's standard cost recovery agreement. A copy of that standard cost recovery agreement is available at [www.epicenergy.com.au](http://www.epicenergy.com.au)

3.3.11 The NGR may also require a participant to pay other costs and, if so, those costs will also be payable by the Proponent.

## 4 Technical, safety or reliability principles, requirements or processes<sup>10</sup>

4.1 A Proponent must complete all details of the Access Request Form at the 'Application Stage' and advise where the Proponent considers that any particular requirement in that Access Request Form is not, in the Proponent's view, applicable, including providing reasons as to why the Proponent considers that a requirement is not applicable.

4.1.1 At a minimum, any connection point for the receipt or delivery of gas must include the following which, for safety and pipeline reliability reasons, will be owned and operated by Epic Energy, and as shown in Figure 1 below:

- (a) Metering equipment
- (b) Gas chromatograph

<sup>10</sup> Rule 39(2)(e)

- (c) Pressure regulation
- (d) Actuated isolation valving
- (e) Gas filtration
- (f) Control room
- (g) Integration with Epic Energy's SCADA and Customer Reporting System .

4.1.2 As a minimum, Epic Energy will require:

- (a) unrestricted access to land occupied by the Proponent and any adjacent land; and
- (b) all design and construction documentation of the facility or pipeline that is proposed to be connected to the Epic Pipeline.

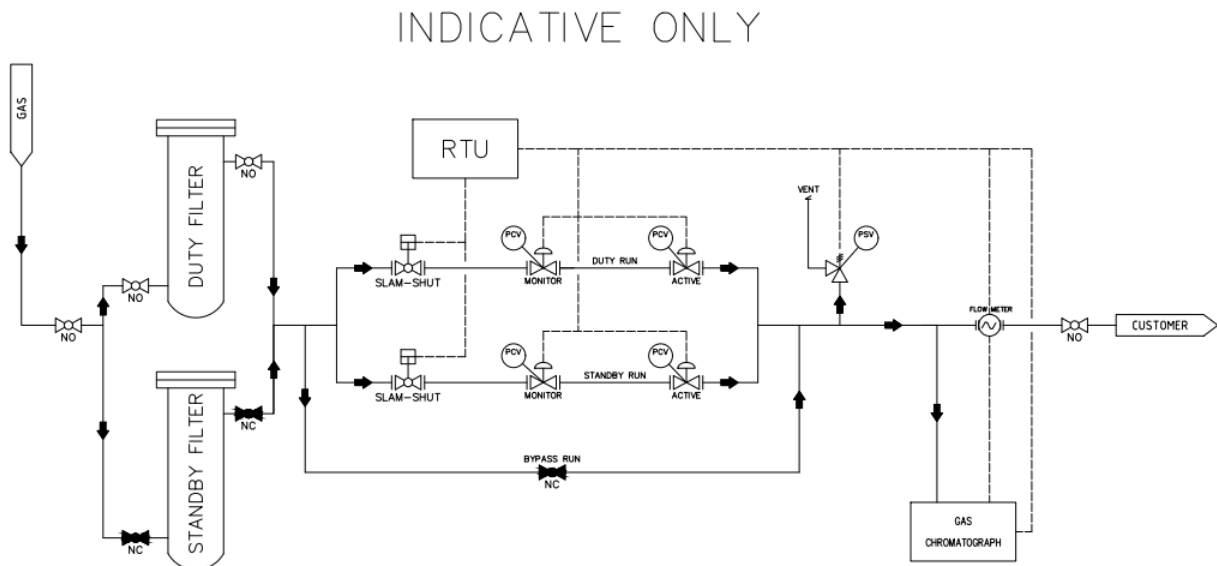


Figure 1

## 4.2 Required information<sup>11</sup>

4.2.1 As noted above, a Proponent:

- (a) wishing to interconnect to an Epic Pipeline must furnish Epic Energy with certain documents during the Application Stage; and
- (b) in particular, must complete all details of the Access Request Form and advise where a particular requirement is not, in the Proponent's view, applicable, including reasoning as to why this is determined to be not applicable.

<sup>11</sup> NGR, rule 39(2)(c)



4.2.2 During the Concept Stage Epic Energy will provide information as agreed in the cost recovery agreement to be entered into between Epic Energy and the Proponent (as referenced in clause 3.3.10 above).

#### 4.3 Relevant policies

4.3.1 All policies relevant to a Proponent are available at [www.epicenergy.com.au](http://www.epicenergy.com.au) <sup>12</sup>

4.3.2 Any application to interconnect with an Epic Pipeline must comply with each policy contained at the website outlined above, along with any of the requirements outlined in this Interconnection Policy.

#### 4.4 Standard Terms

4.4.1 Any interconnection agreement will be on terms agreed between the Proponent and Epic Energy during the Negotiation Stage as outlined above at clause 3.3.4.

4.4.2 Notwithstanding the above, Epic Energy's standard terms and conditions for an interconnection agreement are set out in Appendix A to this policy. <sup>13</sup>

## 5 Fees

5.1 Interconnection fees, fees for connection works, and ongoing fees for interconnection services will be calculated on a case by case basis. The terms of payment of any such fees will be set out in the relevant agreement between the Proponent and Epic Energy.

5.2 In circumstances where an interconnection (or a part of it) is developed by Epic Energy, fees will be based on the directly attributable cost of:

5.2.1 constructing, operating and maintaining the interconnection (or relevant part); and

5.2.2 where gas is to be injected into the Epic Pipeline at the interconnection point, installing, operating and maintaining metering and gas quality monitoring equipment required to be installed as a result of the interconnection,

to the extent that this is undertaken by Epic Energy, including so as to achieve a rate of return that reflects the relevant pricing principles in the NGR<sup>14</sup>.

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<sup>12</sup> NGR, rule 39(2)(d)

<sup>13</sup> NGR, rule 39(2)(g)

<sup>14</sup> NGR, rule 38(3). The relevant pricing principles are in rule 113Z(4) of the NGR.



## Appendix 2: Standard Terms - Interconnection

/

# Interconnection Agreement

[insert interconnection name]

—

Epic Energy South Australia Pty Ltd

and

[insert Interconnecting Party name]

—

**NOTE – TO BE READ IN CONJUNCTION WITH THE  
INTERCONNECTION POLICY**

# Interconnection Agreement

[insert interconnection name]

---

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# Details

## Date

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## Parties

Name	<b>Epic Energy South Australia Pty Ltd</b>
ABN	54 068 599 815
Short form name	<b>Epic</b>
Address	Level 6, 70 Franklin Street, Adelaide SA 5000

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Name	The Party described in Item 1 of Schedule 1
ABN	As described in Item 1 of Schedule 1]
Short form name	<b>Interconnecting Party</b>
Address	As described in Item 1 of Schedule 1

---

## Background

- A Epic owns and operates the Pipeline System.
- B The Interconnecting Party owns and operates, or intends to construct, own and operate, the Facility.
- C The Interconnecting Party wishes to connect the Facility to the Pipeline System at the Interconnection Point.
- D The Parties have agreed that:
- (i) Epic will:
    - (a) design, construct, commission, own and operate the Interconnection Point; and
    - (b) carry out the Other Epic Works (if any); and
  - (ii) the Interconnecting Party will:
    - (a) construct or install, commission, own and operate the Facility; and
    - (b) carry out the Other Interconnecting Party Works (if any).
- on and subject to the terms of this Agreement.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this Agreement unless a contrary intention appears:

**Adequate Assurance** is defined in clause 11.2.

**Affiliate** of a Party means a Related Body Corporate of that Party, together with each fund or other entity in respect of which the Related Body Corporate performs services as a manager, trustee or responsible entity.

**Agreement** means this interconnection agreement, including its schedules and attachments, as this agreement is amended or supplemented from time to time.

**Annual Connection Charge** for:

- (a) the first Payment Year, is the amount set out in Item 11 of Schedule 1; and
- (b) a subsequent Payment Year, is the amount for that Payment Year as determined in accordance with clause 9.2.

**[Note: The Annual Connection Charge is to be negotiated between Epic and the Interconnecting Party after all costs have been determined through engineering studies and will include up front reimbursement of costs and ongoing operation and maintenance costs.]**

**Approval** means any approval, consent, exemption, filing, licence, authority, permit, registration or waiver required from, or provided by, a Government Agency.

**Asset** means:

- (a) in the case of Epic, the Pipeline System, or the part of the Pipeline System that is connected to the Interconnection Point; and
- (b) in the case of the Interconnecting Party, the Facility and the Other Interconnecting Party Works.

**Business Day** means any day other than a Saturday, Sunday or public holiday in Adelaide, South Australia.

**Change of Law** means:

- (a) any law, regulation, rules, code, or sub-code being introduced, amended or repealed in whole or in part;
- (b) the imposition of any Impost which was not in force as at the Execution Date;
- (c) the repeal or removal of an Impost;
- (d) the rate at which any Impost is levied being varied from the rate prevailing as at the Execution Date;
- (e) the basis on which any Impost is levied or calculated being varied from the basis on which it is levied or calculated as at the Execution Date;
- (f) a variation in the interpretation or administration of a law or regulation by a Government Agency or a court or tribunal; or
- (g) a scheme being introduced by any Government Agency providing for Epic to gain or hold any licence, permit or authorisation or providing for Epic to purchase, hold or surrender any certificate, permit or instrument or any such scheme being varied,

except to the extent that such imposition, amendment, repeal, variation or introduction relates to income tax or GST.



**Commissioning Plan** means the commissioning plan prepared by Epic in accordance with Good Industry Practice and all applicable Laws, as it may be amended at any time by Epic under clause 5.5(b).

**Conditions Precedent** means the conditions precedent (if any) described in Item 6 of Schedule 1.

**Confidential Information** is defined in clause 18.1.

**Consequential Loss** means any of the following, however arising and even if it is reasonably contemplated by the Parties, at the date of this Agreement, as a probable result of breach of this Agreement:

- (a) incidental, special, remote or unforeseeable loss or damage;
- (b) loss of revenue, profit, income, bargain, opportunity, use, production, business, contract, goodwill, or anticipated savings, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing; or
- (c) except for the purposes of clause 14.5(a), loss or damage of the nature set out above in paragraphs (a) and (b) that is incurred or suffered by or to a third party.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Cost Recovery Agreement** means the agreement of that title entered into between the Parties prior to the date of this Agreement and referred to in Item 6 of Schedule 1.

**CP Sunset Date** means the date set out in Item 7 of Schedule 1.

**CPI** means the Consumer Price Index All Groups (Weighted Average of Eight Capital Cities) published from time to time by the Australian Bureau of Statistics or, if that index is suspended or discontinued, a comparable index substituted by Epic (acting reasonably).

**Default Notice** is defined in clause 12.1(a).

**Direct Loss** means any loss or damage that is not Consequential Loss.

**Disclosing Party** is defined in clause 18.2(a).

**Dispute** means any dispute or difference arising out of or in connection with this Agreement.

**Dispute Notice** is defined in clause 17.3(a).

**Early Termination Amount** means the amount set out in, or determined in accordance with, Item 12 of Schedule 1.

**Early Termination Sum** is defined in clause 13.2(a).

**Emergency** means an event or situation:

- (a) which does, or may, result in personal injury, death or material damage to property; or
- (b) which does, or may, jeopardise the operational integrity and safe operation of the Gas infrastructure of a Party.

**Epic Facilities** means the Interconnection Point and all other relevant plant and equipment of Epic which is located upstream or downstream (as applicable) of the Interconnection Point (as each of those facilities are constructed, replaced or upgraded from time to time).

**Epic Works** means the works to be undertaken by Epic as described in clauses 5.3(a) and 5.4(a) as those works may be varied in accordance with clause 6.

**Estimated Completion Date** means the date set out in Item 10 of Schedule 1.

**Execution Date** means the date the last Party to execute this Agreement does so.

**Expiry Date** means the date set out in Item 8 of Schedule 1.

**Facility** means the pipeline or other facility described in Attachment 1.

**First Adjustment Date** means the date set out in Item 13 of Schedule 1.

**Force Majeure** is defined in clause 16.1(a).

**Gas** means any hydrocarbons in a gaseous state and any mixture of one or more hydrocarbons in a gaseous state that may contain other gases (including the residue resulting from treatment or processing of natural gas).

**Gas Transportation Agreement** means an agreement (in a form and on terms acceptable to Epic acting reasonably) between Epic and either:

- (a) the Interconnecting Party;
- (b) a Related Body Corporate of the Interconnecting Party; or
- (c) another person,

under which the counterparty is entitled to be provided with one or more Pipeline Services involving the receipt, or delivery, of Gas by Epic at or through the Interconnection Point.

**GJ** means gigajoule.

**Good Industry Practice** means, in relation to particular infrastructure or equipment at a point in time, generally accepted practices, methods and acts practised in the Australian Gas industry at the relevant time to construct, install, commission, operate, maintain and repair (as applicable) such infrastructure or equipment, exercising reasonable judgment, lawfully, safely, reliably, efficiently and economically, having regard to the type, size, design, configuration, location and other attributes and operating conditions of that infrastructure or equipment.

**Government Agency** means any government or any governmental, semi-governmental, administrative, regulatory, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in Australia (whether federal, state or local) or any other part of the world.

**Guarantor** is defined in clause 11.1.

**Health and Safety Law** means all health, safety or security related Laws that is in any way applicable to the Interconnecting Party Works or the Epic Works (as applicable).

**Impost** means any royalty (whether based on value, profit or otherwise), tax, excise, levy, fee, rate, charge or cost levied, charged or imposed on Epic or any third party by any Government Agency, or other body authorised by law to impose that Impost and the cost of any certificate, permit or instrument required to be acquired.

**Information Recipient** is defined in clause 18.2.

**Interconnecting Party Facilities** means the Facility and all other relevant plant and equipment which is or will be located upstream or downstream (as applicable) of the Interconnection Point (as each of those facilities are constructed, replaced or upgraded from time to time).

**Interconnecting Party Land** means any land owned, leased or otherwise occupied by the Interconnecting Party.

**Interconnecting Party Works** means all works to be undertaken by the Interconnecting Party under or in connection with this Agreement (including the construction, installation and commissioning of the Facility, and the carrying out of the Other Interconnecting Party Works) as those works may be varied in accordance with clause 6.

**Interconnection Point** means the point of physical connection between the Facility and the Pipeline System described in Attachment 2.

**Interest Rate** means the rate equal to 2% above the corporate overdraft reference rate for overdrafts of greater than \$100,000 (monthly charging cycle) applied from time to time by the Commonwealth Bank of Australia.

**Laws** includes, from time to time:

- (a) legislation, ordinances, regulations, by-laws, local laws, orders and proclamations;
- (b) Approvals;
- (c) principles of law or equity;
- (d) standards, codes and guidelines; and
- (e) directions or notices issued by any Government Agency.

**Liability Cap** means the amount set out in Item 14 of Schedule 1.

**Losses** means losses, costs, damages, expenses and liabilities.

**Material Breach** means:

- (a) where the breach is by the Interconnecting Party, a breach of clause 3.2(b), 4.2, 5.3(b), 5.3(c), 5.4(b), 5.5, 5.8, 5.9, 6.4(a)(ii), 6.5, 7.2(b), 9, 11, 14.4, 14.5, 15.2 or 20; and
- (b) where the breach is by Epic, a breach of clause 3.2(b), 4.1, 5.3(a), 5.4(a), 5.5, 7.1(b), 15.1 or 20.

**Minimum Credit Rating** means a long term senior unsecured debt rating of at least "BBB-" by Standard & Poor's or an equivalent rating from another internationally recognised rating agency,

**Month** means calendar month.

**National Gas Law** means the Schedule to the *National Gas (South Australia) Act 2008* (SA).

**National Gas Rules** is defined in the National Gas Law.

**Operational Commencement Date** means the date on which Epic is satisfied that all stages of commissioning of the Interconnection Point have been completed to its satisfaction which date will be set out in a notice from Epic to the Interconnecting Party.

**Other Epic Works** means the works of that description (if any) described in Attachment 2.

**Other Interconnecting Party Works** means the works of that description (if any) described in Attachment 1.

**Party** means a party to this Agreement.

**Payment Term** means the period commencing on the Payment Term Commencement Date and ending on the Payment Term Expiry Date.

**Payment Term Commencement Date** means:

- (a) subject to paragraph (b), the Operational Commencement Date; or
- (b) if Epic has completed the design and construction of the Interconnection Point in accordance with clause 5.3(a) but is unable to then:
  - (i) connect the Pipeline System and the Facility at the Interconnection Point; or
  - (ii) commission the Interconnection Point,as a result of the Interconnecting Party not having completed all of the Interconnecting Party Works by that date, the day immediately following that date.

**Payment Term Expiry Date** means the date set out in Item 15 of Schedule 1.

**Payment Year** means the period from the Payment Commencement Date to the day prior to the first anniversary of the Payment Commencement Date and each subsequent 12 month period ending on the day prior to each successive anniversary of the Payment Commencement Date during the Payment Term.

**Personnel** means officers, employees, agents, representatives, contractors and subcontractors.

**Pipeline Licence** means the licence(s) described in Item 5 of Schedule 1 issued under the *Petroleum and Geothermal Energy Act 2000* (SA) as the licence(s) may be amended, varied, substituted or added to from time to time.

**Pipeline Service** means Gas receipt, transportation, storage, delivery and related or ancillary services provided by means of the Pipeline System (which, for clarity, includes such services that are traded or auctioned).

**Pipeline System** means the pipeline system described in Item 4 of Schedule 1 operating under the Pipeline Licence.

**PPS Law** means:

- (a) the *Personal Property Securities Act 2009* (Cth) and any regulation made thereunder; and

- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

**Related Body Corporate:**

- (a) in respect of either Party, has the meaning given to that term in section 9 of the Corporations Act; and
- (b) in respect of Epic, includes the following:
  - (i) each entity that would be considered a Related Body Corporate of Service Provider if section 48(2) of the Corporations Act did not apply; and
  - (ii) each entity:
    - (A) which has a relevant interest in the securities of one of the entities referred to in paragraph (i);
    - (B) which is a subsidiary of one of the entities referred to in paragraph (i); or
    - (C) in which one of the entities referred to in paragraph (i) has a relevant interest in its securities,and for these purposes a subsidiary and a relevant interest in securities each has the meaning as defined in the Corporations Act.

**Required Date** means the date set out in Item 9 of Schedule 1.

**Security Amount** means an amount equal to the aggregate of the Annual Connection Charges payable by the Interconnecting Party over the Term.

**Solvency Default** means:

- (a) a "controller" (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 14 days) is made to a court for an order, an order is made or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b) of this definition;
  - (ii) winding up or deregistering a person; or
  - (iii) proposing or implementing a scheme of arrangement (other than on solvent terms);
- (d) any application (not withdrawn or dismissed within 14 days) is made to a court for an order or a resolution is passed, for the purpose of implementing or agreeing:
  - (i) a moratorium of any debts of a person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in that Act);
- (f) anything analogous to anything referred to in paragraphs (a) to (e) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law of any jurisdiction; or
- (g) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

**SP Confidentiality Undertaking** means a written undertaking in favour of, and in a form acceptable to, the Disclosing Party and the Information Recipient, to keep confidential the Confidential Information to be disclosed, on terms the same, or the same in all material respects, as those in clause 18.1.

**Term** means the period from the Execution Date to the date of expiration or earlier termination of this Agreement.

**Undertaking** is defined in clause 11.1.

**Wilful Misconduct** means, in relation to a Party, any act or omission of that Party or any of its Personnel which is:

- (a) done or omitted to be done with deliberate, knowing or reckless disregard for its foreseeable, harmful and avoidable consequences;
- (b) not contemplated or permitted by this Agreement; and
- (c) was not an error of judgment, mistake or other act or omission (negligent or not) that was made in good faith.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) unless otherwise expressly indicated, a reference to time is to Australian central standard time (and not adjusted for daylight saving) even if the obligation is to be performed elsewhere;
- (g) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## 1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

## 1.4 Standards

In this Agreement, terminology used to describe units will, unless otherwise stated, be in accordance with:

- (a) Australian Standard AS ISO 1000 – 1998, the international system of units (SI) and its application;
- (b) the *National Measurement Act 1960* (Cth) and the regulations under that Act;
- (c) AS/NZS 1376 - 1996 Conversion Factors; and
- (d) the Australian Gas Association publication *Metric Units and Conversion Factors for Use in the Australian Gas Industry*.

## 1.5 Rounding

- (a) Subject to clauses 1.5(b) and 1.5(c), any numerical calculation that results in more than four decimal places must be rounded to four decimal places by being rounded up, if the decimal place following the fourth decimal place is greater than or equal to 5, and rounded down, if the decimal place following the fourth decimal place is less than 5.
- (b) Any numerical calculation of a quantity of Gas must be rounded to the nearest GJ by being rounded up, if the first decimal place is greater than or equal to 5, and rounded down, if the first decimal place is less than 5.
- (c) Any numerical calculation of a dollar amount must be rounded to the nearest cent by being rounded up, if the next decimal place is greater than or equal to 5, and rounded down, if the next decimal place is less than 5.

## 2. Conditions precedent

### 2.1 Conditions precedent

Except for clauses 1 (Definitions and Interpretation), 17 (Dispute resolution), 18 (Confidentiality), 20 (Assignment), 21 (Notices), 22 (General) and this clause 2 (Conditions precedent), the performance of the obligations contained within this Agreement is subject to and conditional upon the satisfaction of all of the Conditions Precedent, by no later than 5:00pm on the CP Sunset Date.

### 2.2 Reasonable endeavours

The Parties must use all reasonable endeavours and provide all reasonable assistance (other than monetary assistance) to each other to satisfy the Conditions Precedent by the CP Sunset Date.

### 2.3 Termination

- (a) If the Conditions Precedent are not satisfied, or waived by Epic (which the Interconnecting Party acknowledges and agrees is a matter for Epic at its sole discretion), by 5:00pm on the CP Sunset Date (or such later date as the Parties may agree in writing), either Party may terminate this Agreement by notice in writing to the other Party.
- (b) In the event of such termination, neither Party will have any claim against the other Party (except in relation to any prior breach of this Agreement).

## 3. Term

### 3.1 Commencement

Subject to clause 2, this Agreement commences on the Execution Date.

### 3.2 End of Term

- (a) This Agreement will terminate upon the first to occur of the following:

- (i) subject to clause 3.2(b), the date upon which Epic decommissions and removes the Pipeline System, or the relevant part of the Pipeline System, from the vicinity of the Interconnection Point;
  - (ii) subject to clause 3.2(b), the date upon which the Interconnecting Party decommissions and removes the Facility, or the relevant part of the Facility, from the vicinity of the Interconnection Point;
  - (iii) the date upon which the Parties agree in writing that this Agreement will terminate, regardless of whether the Facility, or the relevant part of the Facility, has been removed from the vicinity of the Interconnection Point;
  - (iv) the date upon which Epic ceases to hold the Pipeline Licence; and
  - (v) the Expiry Date,
- unless terminated earlier in accordance with clause 13 of this Agreement.
- (b) During the period in which there are one or more Gas Transportation Agreements in effect, neither Party may undertake decommissioning or removal as described in clauses 3.2(a)(i) and 3.2(a)(ii) without the prior written consent of the other Party.

## 4. Licences

### 4.1 Interconnecting Party's licence

Epic grants to the Interconnecting Party a licence to connect the Facility to the Pipeline System at the Interconnection Point, and to keep it connected, on and subject to the relevant terms of this Agreement.

### 4.2 Epic's licence

The Interconnecting Party grants to Epic a licence to:

- (a) connect the Pipeline System to the Facility at the Interconnection Point, and to keep it connected; and
- (b) access:
  - (i) any land owned, leased or otherwise occupied by the Interconnecting Party (**Interconnecting Party Land**); and
  - (ii) the Facility,

for the purposes of constructing, commissioning, operating, maintaining, repairing, upgrading and removing any of the Epic Facilities,

on and subject to the terms of this Agreement.

## 5. Construction, commissioning and ownership

### 5.1 Approvals

Unless the Parties otherwise agree in writing:

- (a) the Interconnecting Party must obtain and maintain all Approvals required to carry out the Interconnecting Party Works; and
- (b) Epic must obtain and maintain all Approvals required to carry out the Epic Works.

### 5.2 Co-operation

The Parties will, in good faith, co-operate in relation to:

- (a) the construction of the Facility and the Interconnection Point;
- (b) the carrying out of the Other Epic Works (if any) and the Other Interconnecting Party Works (if any);

- (c) the connection of the Pipeline System and the Facility at the Interconnection Point; and
- (d) the commissioning of the Interconnection Point.

### **5.3 Construction**

- (a) Epic will:
  - (i) design, construct and install the Interconnection Point; and
  - (ii) carry out the Other Epic Works (if any),in accordance with:
  - (iii) all applicable Laws;
  - (iv) Good Industry Practice; and
  - (v) any other requirements of this Agreement,so the Interconnection Point and the Other Epic Works (if any) will be capable of being operated in accordance with Good Industry Practice and the requirements of this Agreement.
- (b) The Interconnecting Party must:
  - (i) construct, install and commission the Facility; and
  - (ii) carry out the Other Interconnecting Party Works (if any),in accordance with:
  - (iii) the specifications set out in Attachment 1;
  - (iv) the scope of work set out in Attachment 1;
  - (v) the construction plans and other documents that have been approved by Epic under this Agreement;
  - (vi) all applicable Laws;
  - (vii) Good Industry Practice;
  - (viii) any reasonable technical, safety and reliability requirements requested by Epic;
  - (ix) any other requirements of this Agreement,so the Facility and Other Interconnecting Party Works (if any) will be capable of being operated in accordance with Good Industry Practice and the requirements of this Agreement.
- (c) The Interconnecting Party must not commence construction of the Facility or Other Interconnecting Party Works unless and until:
  - (i) it has provided Epic with:
    - (A) a proposed program of work;
    - (B) a copy of its construction plans and other documents required by Annexure 1 to be provided before construction; and
    - (C) all other documents and information that Epic may reasonably require; and
- (d) Epic has approved the proposed program of work, plans and other documents (with such approval not to be unreasonably withheld or delayed).

### **5.4 Connection and commissioning**

- (a) Subject to:
  - (i) the Interconnecting Party completing the Interconnecting Party Works to Epic's reasonable satisfaction; and
  - (ii) clause 5.4(b),Epic will:



- (iii) connect the Pipeline System and the Facility at the Interconnection Point in accordance with all applicable Laws and Good Industry Practice; and
  - (iv) subject to clause 5.5, commission the Interconnection Point in accordance with all applicable Laws, Good Industry Practice and the Commissioning Plan.
- (b) The Interconnecting Party must ensure that appropriately qualified and experienced Personnel are available at such times as may be required by Epic to provide Epic with any and all assistance that may be required by Epic during all stages of commissioning as set out in the Commissioning Plan.
- (c) Subject to clause 5.5, Epic will commence the commissioning of the Interconnection Point in accordance with the Commissioning Plan as soon as reasonably practicable after the carrying out of the Interconnecting Party Works, the carrying out of the Other Epic Works, and the construction of the Interconnection Point, have all been completed to Epic's satisfaction.

## **5.5 Commissioning Plan**

- (a) The Parties must comply with the terms of the Commissioning Plan.
- (b) If Epic is of the opinion (acting reasonably) that it is necessary for the Commissioning Plan to be amended:
- (i) Epic will notify the Interconnecting Party of the amendments to the Commissioning Plan as soon as reasonably practicable; and
  - (ii) the Interconnecting Party must comply with those amendments in all respects.
- (c) The Interconnecting Party acknowledges and agrees that, despite anything to the contrary in this Agreement:
- (i) no quantity of Gas whatsoever is to be delivered from, or (as applicable) received into, the Pipeline System through the Interconnection Point prior to the Operational Commencement Date except if, and to the extent, and at the times, that the Commissioning Plan so requires (or as Epic may otherwise direct in writing in its absolute discretion);
  - (ii) the Interconnection Point will be taken to have been commissioned when, and only when, Epic has given written notice to the Interconnecting Party that Epic is satisfied that all stages of commissioning have been completed to its satisfaction; and
  - (iii) subject to clause 5.5(c)(i), unless and until a Gas Transportation Agreement has been executed in respect of Gas deliveries or receipts (as applicable) at or through the Interconnection Point, the Interconnecting Party must:
    - (A) not take any quantity of Gas whatsoever from, or (as applicable) deliver any quantity of Gas whatsoever into; and
    - (B) ensure that no other person takes any quantity of Gas whatsoever from, or delivers any quantity of Gas whatsoever into, the Pipeline System through the Interconnection Point (unless Epic otherwise directs in writing).
- (d) The Interconnecting Party further acknowledges and agrees that clause 5.5(c) applies in its entirety in respect of any quantity of Gas that may be required for the whole or any part of the commissioning of:
- (i) the Interconnection Point; and/or
  - (ii) the Facility (or any part(s) of the Facility).
- (e) If any activity, step or action set out or referred to in, or required by, the Commissioning Plan is:
- (i) cancelled at the request of the Interconnecting Party; or
  - (ii) is, in whole or in part, either:

- (A) unable to be completed or fulfilled as required by the Commissioning Plan;  
or
- (B) unable to be completed or fulfilled within, or by, the time specified or allowed for in the Commissioning Plan,

as a result of any act, failure to act, or omission, by, or on behalf of, the Interconnecting Party or any Personnel of the Interconnecting Party,

the Interconnecting Party must (at Epic's election) either bear, or reimburse Epic for, all costs (including Epic's internal costs) and expenses incurred by Epic which would not have been incurred had that cancellation, act, failure to act or omission not occurred. Where Epic elects to be reimbursed, the Interconnecting Party must pay the relevant amount to Epic within 5 Business Days after receipt of a tax invoice from Epic for that amount..

## **5.6 Timing for construction, commissioning and connection**

- (a) Subject to the Interconnecting Party completing the Interconnecting Party Works in accordance with this clause 5 by the Required Date, Epic estimates, as at the Execution Date, that it will complete the carrying out of the Other Epic Works (if any) and the construction of the Interconnection Point, and their commissioning, by the Estimated Completion Date.
- (b) Nothing in clause 5.6(a) or elsewhere in this Agreement is, or is to be taken to be, a representation or warranty by Epic that it will complete the carrying out of the Other Epic Works (if any) and the construction and commissioning of the Interconnection Point by the Estimated Completion Date.

## **5.7 Ownership**

- (a) Epic will own, operate and maintain the Interconnection Point.
- (b) The Interconnecting Party will own, operate and maintain the Facility.

## **5.8 Health and safety**

- (a) Without limiting its obligations under clauses 5.3(b) and 5.3(c), the Interconnecting Party is responsible for all aspects of health and safety for, or in connection with, the Interconnecting Party Works including:
  - (i) ensuring the safe performance of the Interconnecting Party Works; and
  - (ii) ensuring any workplace, and the means of entering and exiting it, is safe and secure.
- (b) The Interconnecting Party must:
  - (i) comply with, and ensure that all other persons engaged in the Interconnecting Party Works comply with, all Health and Safety Laws;
  - (ii) cooperate with and do all things necessary to assist, and refrain from doing anything that may impede, Epic or its Personnel in discharging their obligations under Health and Safety Laws; and
  - (iii) immediately advise Epic in writing of any circumstance relevant to the Interconnecting Party's ability to perform the Interconnecting Party Works safely in any material respect.

## **5.9 Items to be provided by Connecting Party**

- (a) If required by Epic, the Interconnecting Party must provide Epic with connections to power and utilities, the supply of power and utilities at and from those connections, and data feeds, as reasonably required by Epic for the construction, installation, operation, management, maintenance and/or repair of the Epic Works.
- (b) Such power, utilities and data must be supplied, without charge to Epic, at a point selected by Epic at or near the location of the Epic Works.

## 6. Variations

### 6.1 Proposed variations

If, at any time, the Interconnecting Party wishes:

- (a) to vary the nature, extent, timing or sequence of any of the Interconnecting Party Works such that:
  - (i) one or more of the specifications set out in Attachment 1 will no longer be met;
  - (ii) there will be a need to alter one or more aspects of the scope of work set out in Attachment 1; and / or
  - (iii) any of the construction plans and/or any other documents that have been approved by Epic under this Agreement will need to be modified,the Interconnecting Party must:
  - (iv) give full and complete details of the proposed variations (**Proposed IP Variations**) by notice in writing to Epic (**Proposed IP Variations Notice**), and such further information as Epic may subsequently request; and
  - (v) not make any of the variations, except in compliance with this clause 6; or
- (b) Epic to alter the nature, extent, timing or sequence of any of the Epic Works, the Interconnecting Party must give full and complete details of the proposed variations (**Proposed Epic Variations**) by notice in writing to Epic (**Proposed Epic Variations Notice**), and such further information as Epic may subsequently request.

### 6.2 Epic's response

As soon as reasonably practicable after receipt of a:

- (a) Proposed IP Variations Notice and any further information that Epic may subsequently request, Epic will give written notice to the Interconnecting Party advising:
  - (i) whether any variations will be required to the nature, extent, timing or sequence of any of the Epic Works as a consequence of the Proposed IP Variations (**Consequential Epic Variations**); and
  - (ii) if so:
    - (A) whether the Consequential Epic Variations are technically feasible and consistent with the safe and reliable operation of the Pipeline System (or any relevant part of it);
    - (B) the nature and extent of the Consequential Epic Variations; and
    - (C) the amount by which the Annual Connection Charge will be increased to accommodate the Consequential Epic Variations; or
- (b) Proposed Epic Variations Notice and any further information that Epic may subsequently request, Epic will give written notice to the Interconnecting Party advising:
  - (i) if the Proposed Epic Variations are technically feasible and consistent with the safe and reliable operation of the Pipeline System (or any relevant part of it); and
  - (ii) if so:
    - (A) the amount by which the Annual Connection Charge will be increased to accommodate the necessary variations; and
    - (B) any resulting changes that will be needed to be made to the timing or sequence of any of the Epic Works.

### 6.3 Decision by Interconnecting Party

As soon as practicable and, in any event, within 10 Business Days, after receipt of a notice from Epic under clause 6.2, the Interconnecting Party must give written notice to Epic:

- (a) in the case of Proposed IP Variations, either:

- (i) confirming that the Interconnecting Party:
    - (A) will proceed with the Proposed IP Variations;
    - (B) accepts the need for the Consequential Epic Variations; and
    - (C) accepts the increase to the Annual Connection Charge; or
  - (ii) that the Interconnecting Party will not proceed with the Proposed IP Variations; and
- (b) in the case of Proposed Epic Variations, either:
- (i) confirming that the Interconnecting Party:
    - (A) wishes Epic to proceed with the Proposed Epic Variations;
    - (B) accepts the need for any resulting changes that will be needed to be made to the timing or sequence of any of the Epic Works; and
    - (C) accepts the increase to the Annual Connection Charge; or
  - (ii) that the Interconnecting Party does not wish Epic to proceed with the Proposed Epic Variations.

#### **6.4 Failure to notify**

If the Interconnecting Party fails to give a notice to Epic by the time required by clause 6.3, then:

- (a) in the case of Proposed IP Variations, the Interconnecting Party:
  - (i) will be deemed to have given a notice under clause 6.3(a)(ii); and
  - (ii) must not proceed with the Proposed IP Variations; or
- (b) in the case of Proposed Epic Variations, the Interconnecting Party will be deemed to have given a notice under clause 6.3(b)(ii).

#### **6.5 Costs**

If the Interconnecting Party gives Epic a Proposed IP Variations Notice or a Proposed Epic Variations Notice, the Interconnecting Party must pay Epic all reasonable costs (including internal costs) and expenses incurred by Epic in:

- (a) considering the relevant notice; and
- (b) reaching, and notifying the Interconnecting Party of, a conclusion for the purposes of clause 6.2,

within 5 Business Days after receipt of a tax invoice from Epic for the relevant amount.

## **7. Operation and maintenance**

### **7.1 Epic Facilities**

Epic:

- (a) is solely responsible for the operation, repair, upgrading and maintenance of the Epic Facilities; and
- (b) will operate, repair, upgrade and maintain the Epic Facilities in accordance with all applicable Laws and Good Industry Practice.

### **7.2 Interconnecting Party Facilities**

The Interconnecting Party:

- (a) is solely responsible for the operation, repair, upgrading and maintenance of the Interconnecting Party Facilities; and
- (b) must operate, repair, upgrade and maintain the Interconnecting Party Facilities in accordance with all applicable Laws and Good Industry Practice.

### **7.3 Emergency Access**

- (a) The Interconnecting Party grants to Epic (including its Personnel) such access to the Interconnecting Party Land and the Interconnecting Party Facilities as is reasonably required to prevent, or mitigate the effects of, an Emergency.
- (b) Where Epic is exercising a right of access under clause 7.3(a) it will:
  - (i) to the extent practicable and having regard to the nature of the Emergency, provide as much notice to the Interconnecting Party as practicable of its intention to exercise that right of access, and use reasonable endeavours to minimise any interference to the Interconnecting Party Facilities;
  - (ii) exercise its right of access reasonably and prudently;
  - (iii) within a reasonable time of request, provide a report to the Interconnecting Party describing in reasonable detail:
    - (A) the nature of the Emergency;
    - (B) the steps taken by Epic to address the Emergency; and
    - (C) any action taken in relation to the Interconnecting Party Facilities; and
  - (iv) comply with:
    - (A) all applicable Laws;
    - (B) all site procedures and safety requirements notified to Epic by the Interconnecting Party (but only if those procedures and requirements also apply to the Interconnecting Party's own use of the Interconnecting Party Facilities); and
    - (C) any reasonable directions given by the Interconnecting Party.

## **8. Opening and closure of the Interconnection Point**

### **8.1 Meaning of close**

For the purposes of this clause 8, Epic will be regarded as closing the Interconnection Point if Epic closes (whether partly or fully) any valve forming part of the Epic Facilities so as to prevent or restrict the delivery or receipt of Gas to, from or through the Interconnection Point.

### **8.2 Interconnection Point to be closed**

The Interconnecting Party acknowledge and agrees that, except as is otherwise expressly provided in this clause 8, the Interconnection Point will remain closed at all times after the Operational Commencement Date.

### **8.3 Opening during the term of a Gas Transportation Agreement**

The Interconnecting Party further acknowledge and agrees that Epic will open the Interconnection Point only if, and to the extent that:

- (a) one or more Pipeline Services are required to be provided by Epic under a Gas Transportation Agreement; and
- (b) the provision of the Pipeline Service(s) under that Gas Transportation Agreement require(s) Gas to be received or delivered by Epic at or through the Interconnection Point.

## **9. Connection Charge**

### **9.1 Obligation to pay**

The Interconnecting Party must pay the Annual Connection Charge for each Payment Year in accordance with this clause 9.

## 9.2 Adjustment of Annual Connection Charge

- (a) Subject to clause 9.2(b), the Annual Connection Charge will be adjusted on 1 January of each year (with the first adjustment occurring on the First Adjustment Date) in accordance with the following formula:

$$ACC_n = ACC_{n-1} \times [1 + ((CPI_a - CPI_b) / CPI_b)]$$

where:

**ACC<sub>n</sub>** is the Annual Connection Charge to apply from the relevant 1 January;

**ACC<sub>n-1</sub>** is the Annual Connection Charge as at 31 December immediately preceding the relevant 1 January;

**CPI<sub>a</sub>** means the CPI in respect of the September quarter immediately preceding the relevant adjustment date; and

**CPI<sub>b</sub>** means the CPI in respect of the September quarter that is 12 months before the quarter to which CPI<sub>a</sub> relates.

- (b) If, when calculating an adjustment for a subsequent Payment Year under clause 9.2(a), CPI<sub>a</sub> is less than CPI<sub>b</sub>, then the Annual Connection Charge for that subsequent Payment Year will be the same amount as at 31 December immediately prior to the relevant 1 January.

## 9.3 Billing and payment

- (a) The Annual Connection Charge for a Payment Year will be payable in equal Monthly instalments.
- (b) By the date which is 5 Business Days after the beginning of each Month during an Payment Year, Epic will issue an invoice to the Interconnecting Party for that Month's instalment of the Annual Connection Charge.
- (c) Invoices will be in writing and transmitted by email or other electronic means.
- (d) The Interconnecting Party will pay each invoice within 10 Business Days of the date of the invoice, in accordance with the terms of the invoice.
- (e) Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, will accrue interest on the unpaid amount at the Interest Rate.

## 10. Change of Law

### 10.1 Reimbursement

To the extent that a Change of Law directly or indirectly:

- (a) affects the costs of Epic in respect of the goods, services or other things supplied or provided under or in connection with this Agreement or incurred by Epic (or a Related Body Corporate of Epic) to enable it to acquire or dispose of, or as a result of Epic acquiring or disposing of, such goods or services or goods or services of that type, including direct and indirect costs in respect of production, creation, performance, acquisition, supply or sale of such goods, services or other things; or
- (b) leads to a change in the benefits gained by Epic from the activities described in paragraph (a) above (except by operation of this clause),

and the increase or decrease in those amounts or that change in benefit is not to be reimbursed under any other provision of this Agreement, the Interconnecting Party must reimburse to Epic, or (as the case may be) Epic must reimburse to the Interconnecting Party, the amount of the increase or decrease or the change in benefit, as the case may be, attributable to the Change of Law.

### 10.2 Effective date

Any variation to costs or changes in benefits under clause 10.1 will be effective as from the date of any Change of Law.

### 10.3 Notification

Epic must give notice to the Interconnecting Party of any amounts to be reimbursed under clause 10.1 as soon as practicable.

## 11. Security

### 11.1 Undertaking

If:

- (a) at the Execution Date, the Interconnecting Party does not have; or
- (b) at any time during the Term, the Interconnecting Party ceases to have,

a Minimum Credit Rating, the Interconnecting Party must provide Epic with a guarantee of all of the Interconnecting Party's obligations under this Agreement for the Term from a Related Body Corporate of the Interconnecting Party with the Minimum Credit Rating (**Guarantor**) in favour of Epic and in a form required by Epic (**Undertaking**).

### 11.2 Adequate Assurance

If:

- (a) the Interconnecting Party is unable to provide an Undertaking; or
- (b) an Undertaking provided by the Interconnecting Party ceases to have effect; or
- (c) the credit rating of the Guarantor is downgraded below the Minimum Credit Rating; or
- (d) in Epic's reasonable opinion, one or more events have occurred that have, or are likely to have, a material adverse effect on the Guarantor's ability to meet its obligations under the Undertaking,

Epic may request the Interconnecting Party to provide it with one of the following:

- (e) an irrevocable demand guarantee issued on terms and by a bank or other financial institution acceptable to Epic; or
  - (f) an irrevocable letter of credit satisfactory to Epic; or
  - (g) some other form of prudential assurance satisfactory to Epic,
- (each an **Adequate Assurance**) for a sum equal to the Security Amount.

### 11.3 Recourse

If, at any time, the Interconnecting Party fails to pay Epic:

- (a) any amount due and payable under this Agreement within the time provided under this Agreement; or
- (b) any amount due and payable following the resolution of a Dispute pursuant to clause 17,

Epic may, as applicable:

- (c) demand payment of such amount from the Guarantor under the Undertaking; or
- (d) apply the Adequate Assurance in satisfaction of the outstanding payment obligation.

### 11.4 Return

If, at the end of the Term, all or any part of an Adequate Assurance has not been applied by Epic in satisfaction of the Interconnecting Party's payment obligations under this Agreement, Epic will promptly return that Adequate Assurance to the Interconnecting Party.

### 11.5 No commencement or continuation of Epic Works

Despite anything to the contrary in this Agreement:

- (a) Epic will not be required to:

- (i) commence carrying out any of the Epic Works; or, as the case may be
  - (ii) continue carrying out the Epic Works,
- until the Interconnecting Party:
- (iii) provides Epic with an Undertaking under clause 11.1 or, if requested by Epic, but subject to clause 11.5(b), an Adequate Assurance under clause 11.2; or
  - (iv) otherwise satisfies Epic of the ability of the Interconnecting Party to meet its contractual obligations to Epic; and
- (b) if:
- (i) the Interconnecting Party provides Epic with an Adequate Assurance under clause 11.2; but
  - (ii) the Guarantor fails to meet its obligations under that Adequate Assurance,
- Epic will not be required to:
- (iii) commence carrying out any of the Epic Works; or, as the case may be
  - (iv) continue carrying out the Epic Works,
- until the Guarantor meets its obligations under that Adequate Assurance.

## 12. Default

### 12.1 Notice of Default

- (a) If a Party (**Defaulting Party**) commits a Material Breach of this Agreement, the other Party may by notice require the Defaulting Party to remedy that breach as soon as practicable and, in any event, by no later than:
- (i) where the Material Breach is a failure to pay a sum of money, the date that is 5 Business Days after the due date for payment; and
  - (ii) in any other case, the date stipulated in that notice which date must be reasonable given the nature and circumstances of the Material Breach,
- a Default Notice.**
- (b) The Defaulting Party must:
- (i) comply with the Default Notice issued under clause 12.1(a); and
  - (ii) provide all details reasonably requested by the other Party to demonstrate that the Defaulting Party has complied with that Default Notice.

### 12.2 Closure and suspension

If the Interconnecting Party:

- (a) receives a Default Notice from Epic and does not comply with clause 12.1(b) to Epic's reasonable satisfaction; or
- (b) continues to commit the same Material Breach, or commits multiple Material Breaches, of this Agreement,

Epic may:

- (c) without limiting clause 8;
- (d) despite anything to the contrary that may be contained in a Gas Transportation Agreement; and
- (e) without liability to the Interconnecting Party (whether under this Agreement, a Gas Transportation Agreement, or otherwise howsoever),

keep the Interconnection Point closed and suspend any deliveries or receipts of Gas at or through the Interconnection Point until Epic is satisfied (acting reasonably) that:



- (f) all Material Breaches of this Agreement by the Interconnecting Party have been rectified; and
- (g) the Interconnecting Party will not continue to commit Material Breaches of this Agreement.

## 13. Termination

### 13.1 Rights to terminate

A Party may terminate this Agreement by notice to the other Party:

- (a) in accordance with clause 2.3;
- (b) if there is a Material Breach of this Agreement by that other Party and that Material Breach is not remedied by that other Party by the date referred to in clause 12.1(a)(i) or specified in the Default Notice (as applicable); or
- (c) if there is a Solvency Default by that other Party.

### 13.2 Early Termination Amount

- (a) Despite anything to the contrary in this Agreement, if this Agreement is terminated in accordance with clause 13.1(b) or 13.1(c), or is otherwise lawfully terminated (including pursuant to clause 3.2(a)(i), 3.2(a)(ii), 3.2(a)(iii) or 3.2(a)(iv)), the Interconnecting Party must pay to Epic an amount equal to the sum of:
  - (i) the Early Termination Amount; plus
  - (ii) all amounts (if any) payable by the Interconnecting Party under clause 14.4 and clause 14.5(a),being the **Early Termination Sum**.
- (b) The Interconnecting Party must pay the Early Termination Sum within 10 Business Days of receiving an invoice from Epic for the Early Termination Amount in accordance with the terms of that invoice.
- (c) The Interconnecting Party acknowledges and agrees that:
  - (i) the Early Termination Amount is a genuine pre-estimate agreed by the Parties of the loss and damage that Epic will suffer or incur if this Agreement is terminated before the end of the Payment Term and is not intended to be a penalty; and
  - (ii) the Interconnecting Party will not be entitled to, and warrants to Epic that it will not, claim or argue (in any proceeding or otherwise) that the Early Termination Amount is not a genuine pre-estimate of loss or damage that will be suffered or incurred by Epic or is otherwise a penalty or constitutes penal damages or that this clause 13.2 otherwise constitutes a penalty provision.

### 13.3 Accrued obligations

Without limiting any other provision of this Agreement, termination of this Agreement will not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement that existed at or before the date of termination.

## 14. Liability and indemnities

### 14.1 Nature of obligations and rights under this Agreement

- (a) The Parties acknowledge and agree that the intention of this Agreement is solely to regulate the terms of the construction, installation, commissioning, operation and maintenance of the Interconnecting Party Works, the Epic Works and the Interconnection Point.

- (b) The Parties further acknowledge and agree that nothing in this Agreement is intended to, or does:
    - (i) regulate in any way or to any extent, or impose any obligations whatsoever in respect of, the receipt or delivery of any Gas at or through the Interconnection Point, including:
      - (A) the receipt or delivery of any specific quantity of Gas at or through the Interconnection Point; or
      - (B) the receipt or delivery of Gas at or through the Interconnection Point at any specified specifications, pressure or temperature; or
    - (ii) provide the Interconnecting Party, or any other person, with any rights whatsoever to have any quantity of Gas received or delivered at or through the Interconnection Point,
- as such matters will be exclusively dealt with in a Gas Transportation Agreement.

#### **14.2 Direct Losses**

- (a) Subject to clauses 14.2(b) and 18.3(b), but despite any other provision of this Agreement neither Party is liable to the other Party or its Personnel for any Consequential Losses suffered or incurred by that other Party or its Personnel and arising out of or in relation to this Agreement.
- (b) The limitation of liability in clause 14.2(a) will not apply where Consequential Losses are suffered or incurred by a Party or its Personnel as a result of fraud or any other criminal offence by, or Wilful Misconduct of, the other Party or any of its Personnel.

#### **14.3 Limitation of liability**

Despite anything to the contrary in this Agreement:

- (a) Epic will not be liable to the Interconnecting Party for any Losses arising as a result of any breaches of this Agreement, or any defaults arising out of or in relation to this Agreement or the Pipeline System, if and to the extent that Epic is liable in respect of those Losses to the counterparty to a Gas Transportation Agreement, and the Interconnecting Party releases and holds harmless Epic from and against all such Losses; and
- (b) Epic's total maximum liability to the Interconnecting Party for any and all breaches of this Agreement, or defaults arising out of or in relation to this Agreement or the Pipeline System, during the Term will be limited to the Liability Cap.

#### **14.4 Indemnities**

The Interconnecting Party must indemnify Epic from and against all Losses suffered or incurred by Epic arising out of or in relation to:

- (a) any loss of, or damage to, any property of any person; or
- (b) physical injury to, or death of, any person,

and which arise:

- (c) because of any act or omission on the part of the Interconnecting Party or any of its Personnel; or
- (d) in connection with the construction, commissioning, operation, management, maintenance or modification of the Facility or the Other Interconnecting Party Works.

#### **14.5 Identified Third Party indemnity and release**

- (a) Subject to clause 14.5(c), the Interconnecting Party must indemnify Epic from and against all Losses suffered or incurred by Epic to an Identified Third Party which Losses arise by reason of, or in connection with, the occurrence of one or more of the following:
  - (i) any breach of this Agreement or negligent act or omission by Epic in connection with this Agreement or the Pipeline System;

- (ii) any failure to deliver Gas to, from or through the Interconnection Point; and
  - (iii) the specifications, pressure or temperature of Gas delivered to, from or through the Interconnection Point.
- (b) The Interconnecting Party must, if required by Epic by written notice at any time during the term of this Agreement, ensure that each Identified Third Party enters into a deed of release, on terms satisfactory to Epic acting reasonably, under which that Identified Third Party agrees to release Epic from all liability which Epic would otherwise have to that Identified Third Party as a result of any of the matters referred to in paragraphs (i), (ii) and (iii) of clause 14.5(a).
- (c) Upon obtaining a deed of release from an Identified Third Party in accordance with clause 14.5(b), the indemnity in clause 14.5(a) will cease to apply in respect of that Identified Third Party.
- (d) An **Identified Third Party** means any person:
- (i) who owns, leases, operates or controls all or part of the Facility;
  - (ii) who is registered under the National Electricity Rules as a Generator for one or more of the Generating Units comprising the Facility (including a person registered as an Intermediary under clause 2.9.3 of the National Electricity Rules and any person who would have been required to be registered as a Generator in relation to any of the Generating Units comprising the Facility if another party had not been registered as an Intermediary under the National Electricity Rules in relation to that Generating Unit);
  - (iii) who is paid by AEMO for any electricity generated by the Facility or any other services that are provided using the Facility; or
  - (iv) who otherwise deals with or enters into contracts with either the Interconnecting Party or an entity described in paragraphs (i), (ii) or (iii) above in relation to the provision of any services associated with any of the Generating Units making up the Facility, including a contract for the purchase of electricity generated by the Facility or a contract under which the person has a right to otherwise deal with the electricity generated by the Facility,
- but an Identified Third Party does not include any person who is party to:
- (v) this Agreement; or
  - (vi) a Gas Transportation Agreement.
- (e) In clause 14.5(d), **National Electricity Rules** has the meaning given to that term in the Schedule to the *National Electricity (South Australia) Act 1996* and **Generator**, **Generating Units**, **Intermediary** and **AEMO** have the meanings given to those terms in the National Electricity Rules.

## 15. Insurance

### 15.1 Epic insurance during construction and commissioning

- (a) During the period from the commencement of the Epic Works until the completion of the Epic Works, Epic must effect and maintain current, with a major insurance company authorised to carry on general insurance business in Australia and so carrying on general insurance business in Australia, the following insurance policies:
- (i) workers compensation insurance to the extent (if any) required by South Australian law;
  - (ii) third party public liability and product liability insurance covering liability to any third party (including any personnel engaged by Epic in connection with the Epic Works that are not employees of Epic) for death or bodily injury (including illness) and loss of, or damage to, property arising out of anything done or omitted to be done by Epic (including by any employee, contractor or agent thereof) for a liability of not less than \$20 million for any one incident;

- (iii) motor vehicle compulsory third party bodily injury insurance as required by law for all vehicles being the responsibility, or the property, of Epic and used in connection with the Epic Works together with third party property damage insurance covering all such vehicles for a liability of not less than \$20 million for any one incident;
- (iv) contracts works insurance in an amount not less than the cost of the Epic Works; and
- (v) professional indemnity insurance that:
  - (A) covers any liability for breach of duty owed in a professional capacity by Epic and any personnel engaged by Epic in connection with the Epic Works that are not employees of Epic; and
  - (B) is for an amount of not less than \$10 million per claim and in the annual aggregate.
- (b) Epic must, if requested by the Interconnecting Party, provide the Interconnecting Party with copies of certificates of currency for the insurances referred to in clause 15.1(a).
- (c) If Epic subcontracts any part of the Epic Works, it must ensure that each of its subcontractors effects and maintains, until completion of the Epic Works, insurance of the types referred to in clause 15.1(a) above.
- (d) Epic must notify the Interconnecting Party as soon as practicable in writing and in any event within 10 Business Days of any event which will or may result in a claim being made under any of the policies of insurance referred to in clause 15.1(a).
- (e) Epic must notify the Interconnecting Party immediately if any insurance policy required by this Agreement is cancelled for any reason.

## **15.2 Interconnecting Party insurance during construction and commissioning**

- (a) During the period from the commencement of the Interconnecting Party Works until the completion of the Interconnecting Party Works, the Interconnecting Party must effect and maintain current, with a major insurance company of at least "A-" by Standard & Poor's or an equivalent rating from another internationally recognised rating agency, the following insurance policies:
  - (i) workers compensation insurance to the extent (if any) required by South Australian law;
  - (ii) third party public liability and product liability insurance covering liability to any third party (including any personnel engaged by the Interconnecting Party in connection with the Interconnecting Party Works that are not employees of the Interconnecting Party) for death or bodily injury (including illness) and loss of, or damage to, property arising out of anything done or omitted to be done by the Interconnecting Party (including by any employee, contractor or agent thereof) for a liability of not less than \$20 million for any one incident;
  - (iii) motor vehicle compulsory third party bodily injury insurance as required by law for all vehicles being the responsibility, or the property, of the Interconnecting Party and used in connection with the Interconnecting Party Works together with third party property damage insurance covering all such vehicles for a liability of not less than \$20 million for any one incident;
  - (iv) contracts works insurance in an amount not less than the cost of the Interconnecting Party Works; and
  - (v) professional indemnity insurance that:
    - (A) covers any liability for breach of duty owed in a professional capacity by the Interconnecting Party and any personnel engaged by the Interconnecting Party in connection with the Epic Works that are not employees of the Interconnecting Party; and

- (B) is for an amount of not less than \$10 million per claim and in the annual aggregate.
- (b) The Interconnecting Party must, if requested by Epic, provide Epic with copies of certificates of currency for the insurances referred to in clause 15.2(a).
- (c) The Interconnecting Party must ensure that Epic is noted as an interested party in each of the insurances effected under clauses 15.2(a)(ii), 15.2(a)(iii), 15.2(a)(iv) and 15.2(a)(v) above.
- (d) If the Interconnecting Party subcontracts any part of the Interconnecting Party Works, it must ensure that each of its subcontractors effects and maintains, until completion of the Interconnecting Party Works, insurance of the type referred to in clause 15.2(a).
- (e) The Interconnecting Party must notify Epic as soon as practicable in writing and in any event within 10 Business Days of any event which will or may result in a claim being made under any of the policies of insurance referred to in clause 15.2(a).
- (f) The Interconnecting Party must notify Epic immediately if any insurance policy required by this Agreement is cancelled for any reason.

## 16. Force Majeure

### 16.1 Definition

- (a) Subject to clause 16.1(b), for the purposes of this Agreement, **Force Majeure** means any event or circumstance not within the reasonable control of a Party which, by the exercise of due diligence, that Party is not reasonably able to foresee, prevent or overcome, including without limiting the generality of the nature of those events or circumstances and providing they meet the foregoing criteria:
  - (i) acts of God, including earthquakes, floods, washouts, landslides, lightning, storms and the elements;
  - (ii) strikes, lockouts, bans, slowdowns or other industrial disturbances;
  - (iii) acts of enemy, wars, acts of terrorism, blockades or insurrections, riots and civil disturbances, arrest and restraint of rulers and peoples;
  - (iv) fire or explosion;
  - (v) epidemic or quarantine;
  - (vi) any order of any court or any order, law, rule, regulation, act or omission of any Government Agency having jurisdiction or any failure to obtain any necessary governmental consent or approval;
  - (vii) any accident, breakages or accident to machinery or pipelines, the necessity for making repairs and/or alterations in machinery or pipelines (other than routine maintenance for which notice has not been given), freezing of pipelines; or
  - (viii) partial or entire failure of pipeline(s) or deliverability.
- (b) Notwithstanding clause 16.1(a), the following will not under any circumstance constitute (directly or indirectly) events or circumstances of Force Majeure:
  - (i) changes in market structure or market conditions for the sale or transportation of Gas;
  - (ii) commercial failure, expiration or termination for whatever reason of a contract; or
  - (iii) lack of finance or funds.

## 16.2 Non-performance excused

Subject to clauses 16.3 and 16.4, any failure by either Party to perform an obligation under this Agreement will, during the time and to the extent that such performance is prevented, wholly or in part, by Force Majeure:

- (a) be excused and not constitute a default of that Party's obligations under this Agreement; and
- (b) not give rise to any liability to the other Party for loss or damage of any kind arising out of, or in any way connected with, that non-performance.

## 16.3 Notification and diligence

A Party that is, by reason of Force Majeure, unable to perform an obligation under this Agreement must:

- (a) give the other Party a written notice as soon as possible after becoming aware of the Force Majeure specifying:
  - (i) particulars of the event or circumstance of Force Majeure (known at the time of giving notice) including the date of commencement of the event or circumstance and an estimate of the period of time required to enable it to resume full performance of its obligations; and
  - (ii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure;
- (b) use reasonable and prudent efforts to remedy, abate or mitigate the effects of the Force Majeure as expeditiously as possible; and
- (c) resume performance as expeditiously as possible after the Force Majeure has abated to an extent which permits resumption of performance, and notify the other Party immediately when resumption of performance has occurred.

## 16.4 Consequence of Force Majeure

- (a) An event or circumstance of Force Majeure does not relieve either Party from its obligations to make payments of any amounts then due under this Agreement.
- (b) An event or circumstance of Force Majeure affecting a Party does not suspend or reduce that Party's obligation to pay any moneys that would be payable under this Agreement.

## 17. Dispute resolution

### 17.1 Method of resolution

Any Dispute between the Parties must be resolved in accordance with the provisions of this clause 17.

### 17.2 Acknowledgement

The Parties acknowledge that while Disputes may arise from time to time, their intent is to ensure that any Dispute is resolved in a timely and cost effective manner.

### 17.3 Service of Notice

- (a) If a Dispute between the Parties arises at any time, then a Party may give the other Party a written notice which is dated, signed, specifies the precise nature of the Dispute and designates its representative in negotiations (**Dispute Notice**).
- (b) The other Party must promptly give notice designating its representative in negotiations with similar authority.

## 17.4 Meeting

Within 10 Business Days of service of a Dispute Notice, representatives of the Parties referred to in clause 17.3 must meet and use all reasonable efforts to resolve the Dispute (by negotiation or otherwise).

## 17.5 Senior officers

If a Dispute is not resolved within 10 Business Days after the meeting between the Parties under clause 17.4, each Party must immediately refer the Dispute to its senior executive officers (or any person authorised by senior executive officers) who must meet within 5 Business Days and use all reasonable efforts to resolve the Dispute.

## 17.6 Failure to resolve Dispute

If the Parties are unable to resolve a Dispute in accordance with clause 17.5 then either Party may commence proceedings in a court of competent jurisdiction in South Australia.

# 18. Confidentiality

## 18.1 Confidential information

Each Party acknowledges and agrees that:

- (a) all data and information that is received by Epic from the Interconnecting Party pursuant to this Agreement, or of which Epic otherwise becomes aware in the course of performing this Agreement, that is specific to the subject matter of this Agreement and is reasonably likely to be commercially sensitive;
  - (b) all data and information that is received by the Interconnecting Party from Epic pursuant to this Agreement, or of which the Interconnecting Party otherwise becomes aware in the course of performing this Agreement; and
  - (c) the terms of this Agreement,
- (together, **Confidential Information**) is confidential.

## 18.2 Obligations

Subject to clause 18.3, a Party receiving Confidential Information (**Information Recipient**) must not disclose it to any other person for any purpose except:

- (a) with the prior written consent of the other Party (**Disclosing Party**); or
- (b) in the following circumstances and upon the following conditions:
  - (i) to the extent required by any applicable Laws (including, for clarity, the National Gas Law and National Gas Rules and any instruments made under either of them) or any Government Agency, including any recognised stock exchange (except that this paragraph does not require a Party to disclose any information of the kind referred to in section 275(1) of the PPS Law);
  - (ii) to the extent that the information is at that time generally available to the public, otherwise than as a result of a breach of this Agreement;
  - (iii) to any Affiliate (including its employees, directors, consultants, contractors, lawyers, corporate advisers, investment managers, investment advisers, financial advisers, insurers, financiers, accountants and auditors), provided such disclosure is for the purposes of this Agreement;
  - (iv) to a bank or other financial institution (including its directors, employees, consultants, advisers, accountants and lawyers) in connection with the organisation of the financial affairs of the Information Recipient or its Affiliate;
  - (v) to a bona fide proposed assignee, transferee or purchaser of some or all of the share capital of the Information Recipient or in the case of Epic, its Related Bodies Corporate (including its proposed financier and its respective directors, employees, consultants, advisers, accountants and lawyers);

- (vi) to the employees, directors, consultants, contractors, lawyers, corporate advisers, investment managers, investment advisers, financial advisers, insurers, financiers, accountants and auditors of the Information Recipient for the purposes of this Agreement; or
- (vii) to the extent required by an order of a court of competent jurisdiction or otherwise for the purposes of any litigation or arbitration.

### **18.3 Additional obligations**

- (a) The Information Recipient must:
  - (i) prior to making any disclosure permitted by clause 18.2(b)(iii), 18.2(b)(iv), 18.2(b)(v) or 18.2(b)(vi) (each a **Specified Person**):
    - (A) make the Specified Person aware of the need to keep confidential the Confidential Information intended to be disclosed; and
    - (B) take reasonable steps to ensure that the Specified Person does not do anything inconsistent with the Information Recipient's obligations under this clause 18 and complies with this clause 18 as if references to the Information Recipient were references to that Specified Person; and/or
  - (ii) if requested in writing by the Disclosing Party, either in a specific instance or generally for the purposes of this clause 18.3(a)(ii), require any Specified Person of the type referred to in clause 18.2(b)(v) to whom it intends to make the disclosure to enter into a SP Undertaking.
- (b) Subject to clause 18.3(c), if the Information Recipient makes a disclosure to any Specified Person:
  - (i) without complying with the Information Recipient's obligations under clause 18.3(a)(i); or
  - (ii) in compliance with the Information Recipient's obligations under clause 18.3(a)(i), but that Specified Person nevertheless does something inconsistent with the Information Recipient's obligations under this clause 18,  
  
and the Disclosing Party suffers or incurs any material Losses as a result, the Information Recipient will be liable for those Losses.
- (c) Clause 18.3(b) will not apply if the Information Recipient obtains a SP Confidentiality Undertaking, whether as a result of a request from the Disclosing Party under clause 18.3(b)(i) or otherwise.

## **19. GST**

### **19.1 Exclusive of GST**

Unless otherwise specified, the amounts payable for any supplies made under this Agreement have been determined by the Parties without regard to the amount of any liability for GST on those supplies.

### **19.2 Taxable supplies**

If a payment made by a Party under this Agreement constitutes consideration for a taxable supply, the amount to be paid for the supply will be increased so that the net amount retained by the supplier, after payment of GST, is the same as if the supplier was not liable to pay GST in respect of the supply.

### **19.3 Reimbursements**

If a Party is required to reimburse, indemnify or pay to another Party an amount calculated by reference to a cost, expense, outgoing or other amount paid or incurred by that Party, then the relevant amount will be reduced by the amount of any input tax credit to which that Party is entitled in respect of any acquisition relating to that cost, expense, outgoing or other amount.



## 19.4 Variations

If for any reason (including, the occurrence of an adjustment event) the amount of GST payable on a taxable supply varies from the GST amount paid to the supplier, the Parties will account to each other for the difference.

## 19.5 Definitions

Terms defined in the GST Law have the same meaning when used in this clause 19.

## 20. Assignments and transfers

### 20.1 Transfer of Assets

Neither Party may sell, transfer or otherwise dispose of its Asset to any person unless that person has entered into an agreement with both of the Parties in the form set out in Attachment 3 or such other form as the Parties may agree.

### 20.2 Restriction on assignments

A Party may not assign, novate, transfer or otherwise dispose of any or all of its rights or obligations under this Agreement except to a person to whom that Party sells, transfers or otherwise disposes of its Asset under, and in accordance with, clause 20.1.

## 21. Notices

### 21.1 Written form

- (a) Except as otherwise provided in this Agreement, any notice or invoice issued under this Agreement must be:
- (i) in writing and signed by a person duly authorised by the sender; and
  - (ii) hand delivered or sent by prepaid post, email or facsimile to the recipient's address, email address or facsimile number specified in clause 21.2, as varied by any notice given by the recipient to the sender.
- (b) A notice or invoice issued in accordance with clause 21.1(a) will be taken to be received:
- (i) if hand delivered, on delivery;
  - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
  - (iii) if sent by email, when the sender has received a confirmation email from the addressee of the original email (provided that an auto-generated reply from the addressee will not constitute such a confirmation),

but if the delivery, receipt or transmission is not on a Business Day or is after 1700 hours (local time) on a Business Day in the place of receipt, the notice is taken to be received at 0900 hours (local time) on the next Business Day in the place of receipt.

### 21.2 Address for notices

Unless changed, the Parties' address and other contact details for notices under this Agreement are:

- (a) in the case of Epic:

**Non-operational notices**

Epic Energy South Australia Pty Limited

26 High Street

Dry Creek SA 5094

Attention: General Manager Commercial  
Telephone: (08) 8343 8100  
Email: commercial@epic.com.au

**Operational notices**

Epic Energy South Australia Pty Limited

Attention: Pipeline Control  
Telephone: 1300 662 734  
Email: [gas.control@epic.com.au](mailto:gas.control@epic.com.au)

- (b) in the case of the Interconnecting Party:

**Non-operational notices**

As set out in Item 2 of Schedule 1.

**Operational notices**

As set out in Item 3 of Schedule 1.

## 22. General

### 22.1 Entire agreement

This Agreement:

- (a) constitutes the entire agreement between the Parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

### 22.2 Amendment

This Agreement may only be amended by another written agreement executed by the Parties.

### 22.3 Waiver

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

### 22.4 Continuing performance

- (a) The obligations under this Agreement continue until satisfied in full and do not merge with any action performed or document executed by any Party for the purposes of performance of this Agreement.
- (b) Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.
- (c) Any indemnity given by any Party under this Agreement:
  - (i) constitutes a liability of that Party separate and independent from any other liability of that Party under this Agreement or any other agreement; and
  - (ii) survives and continues after performance of this Agreement.

### 22.5 Further action

Each Party must use all reasonable efforts to do all things necessary or desirable to give full effect to this Agreement.

## **22.6 Subcontracting**

Epic will be entitled to subcontract the performance of any of its obligations under this Agreement.

## **22.7 Relationship**

This Agreement does not create a relationship of employment, agency or partnership between the Parties.

## **22.8 Costs**

Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

## **22.9 Governing law and jurisdiction**

- (a) This Agreement is governed by the law of South Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of South Australia and courts of appeal from them for determining any dispute concerning this Agreement.

## **22.10 Counterparts and electronic execution**

- (a) This Agreement may be executed in any number of counterparts.
- (b) Each counterpart constitutes an original of this Agreement, and all counterparts together constitute one instrument.
- (c) Each Party:
  - (i) consents to this Agreement being executed electronically by any method (including by signing on an electronic device, electronic signing platform or by digital signature) and existing in electronic form; and
  - (ii) agrees that:
  - (iii) electronic signature and the method used is a legally valid and binding method of execution; and
  - (iv) electronic signature is conclusive as to the identity of a Party and their intention to be bound as if signed by that Party's (or any of its duly authorised signatory's) manuscript signature.

## **22.11 Exclusion of implied conditions and warranties**

The Parties acknowledge and agree that in the performance of this Agreement all implied conditions and warranties are excluded, except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this Agreement to be void.

## **22.12 No limit in breach of statute**

Nothing in this Agreement excludes or limits the application of any provision of any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would:

- (a) contravene that statute; or
- (b) cause any part of this Agreement to be void.

## **22.13 Survival**

- (a) Any indemnity or any obligation of confidence under this Agreement is independent of, and survives termination of, this Agreement.
- (b) Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement, including clauses 13.2, 13.3, 14.4, 14.5 and 18.

# Schedule 1 – Particulars

#	Item	Details
1.	Interconnecting Party name, ABN and address	[insert]
2.	Interconnecting Party contact details for non-operational notices	[insert]
3.	Interconnecting Party contact details for operational notices	[insert]
4.	Pipeline System	[insert name of pipeline system]
5.	Pipeline Licence	[Delete whichever is not applicable] Licence number 1 [If MAPS] Licence Numbers 3 and 4 [If SEPS]
6.	Conditions Precedent	<p>The Interconnecting Party having met all of its obligations under the Cost Recovery Agreement to the reasonable satisfaction of Epic.</p> <p>Epic entering into one or more binding agreements with one or more contractors for the engineering, procurement and construction of the Interconnection and the Other Epic Works (if any) on terms acceptable to Epic in its absolute discretion, and each such agreement becoming unconditional.</p> <p>Access to land to complete the Interconnection and the Other Epic Works (if any) is agreed on terms acceptable to Epic in its absolute discretion.</p> <p>Any other agreements that may reasonably be required by Epic are entered into on terms acceptable to Epic, and each such agreement becoming unconditional.</p> <p>[insert any other conditions]</p>
7.	CP Sunset Date	[insert]
8.	Expiry Date	[insert]
9.	Required Date	[insert]
10.	Estimated Completion Date	[insert]
11.	Annual Connection Charge for first Payment Year	\$(insert)
12.	Early Termination Amount	\$(insert) OR [insert description of how this amount is to be calculated]
13.	First Adjustment Date	[insert]
14.	Liability Cap	\$(insert)
15.	Payment Term Expiry Date	[insert]

# Signing page

**EXECUTED** as an agreement.

**Epic Energy South Australia Pty Limited ABN 54 068 599 815** by its duly authorised representative who by his/her execution warrants his/her authority to execute this agreement in the presence of:

\_\_\_\_\_

Signature of witness

\_\_\_\_\_

Name of witness (print)

\_\_\_\_\_

Signature of authorised representative  
(Please delete as applicable)

\_\_\_\_\_

Name of authorised representative (print)

**Executed by [insert name and ABN of Interconnecting Party]** in accordance with section 127 of the *Corporations Act 2001*

\_\_\_\_\_

Signature of director

\_\_\_\_\_

Name of director (print)

\_\_\_\_\_

Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_

Name of director/company secretary (print)

# Attachment 1 – Interconnecting Party Works

## 1. Facility

[insert description]

## 2. Other Interconnecting Party Works

[insert description]

## 3. Specifications for Interconnecting Party Works

[insert]

## 4. Scope of Work for Interconnecting Party Works

[insert]

# Attachment 2 – Epic Works

## 1. Interconnection Point

[insert description]

## 2. Other Epic Works

[insert description]

# Attachment 3 – Novation Agreement

## Novation Agreement

**[Note: If any form of security is required to be provided under clause 10 of the Interconnection Agreement, this agreement may need to be modified, including potentially to deal with the release of that security and its substitution by the Transferee.]**

Date

---

**Parties**      The person described in item 1 of the Schedule (**Transferor**)  
                    The person described in item 2 of the Schedule (**Transferee**)  
                    The person described in item 3 of the Schedule (**Continuing Party**)

---

### Background

- A.      The Transferor and the Continuing Party are the parties to a connection agreement dated [insert] (**Interconnection Agreement**).
  - B.      The Transferor wishes to sell or transfer its Asset (as defined in the Interconnection Agreement) to the Transferee.
  - C.      The parties have entered into this agreement pursuant to relevant provisions in the Interconnection Agreement.
- 

### Agreed terms

#### 1.      Terms

Capitalised terms that are used in this agreement that are not otherwise defined, have the meaning given to them in the Interconnection Agreement.

#### 2.      Novation

In consideration of the agreement by each party to pay to each other party the sum of ten dollars on demand, on and from the date that ownership of the Asset is transferred by the Transferor to the Transferee (**Transfer Date**):

- (a)      the Transferee assumes all of the Transferor's rights and obligations under the Connection Agreement arising on or after the Transfer Date as if the Transferee had been a party to the Interconnection Agreement instead of the Transferor;
- (b)      subject to clause 4, the Continuing Party and the Transferor have no further rights against each other and owe no obligations to each other under the Interconnection Agreement; and
- (c)      the Transferee will be deemed to have become a party to the Interconnection Agreement in place of the Transferor and all references to the Transferor in the Interconnection Agreement are to be read and construed as references to the Transferee.



### 3. Consent

Each party consents to the novation of the Interconnection Agreement from the Transferor to the Transferee in accordance with clause 2.

### 4. Liability

- (a) The Transferor remains liable to the Continuing Party for the performance of all of the Transferor's obligations under the Interconnection Agreement which fell due for performance, but were not performed, before the Transfer Date.
- (b) The Continuing Party remains liable to the Transferor for the performance of all of the Continuing Party's obligations under the Interconnection Agreement which fell due for performance, but were not performed, before the Transfer Date.

### 5. Notices

The address of the Transferee for the purpose of Notices under the Interconnection Agreement is:

- (a) the same as the address set out in item 2 of the Schedule; and
- (b) deemed to be set out in the Interconnection Agreement in place of the address of the Transferor.

### 6. Governing law

The governing law of this agreement is the law of South Australia.

---

## Schedule

#### Item 1: Transferor

Name: [insert]

Address: [insert]

#### Item 2: Transferee

Name: [insert]

Address: [insert]

#### Item 3: Continuing Party

Name: [insert]

Address: [insert]

---

[insert execution clauses]

# Cost Recovery Agreement

[insert description of SOW Purpose]

—

Epic Energy South Australia Pty Ltd (**Epic**)

[insert] (**CR Party**)

—

# Cost Recovery Agreement

**[insert description of SOW Purpose]**

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# Details

## Date

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## Parties

Name	<b>Epic Energy South Australia Pty Ltd</b>
ABN	54 068 599 815
Short form name	<b>Epic</b>
Notice details	Level 6, 70 Franklin Street Adelaide SA 5000 Email: [insert] Attention: [insert]

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Name	<b>The Party described in item Error! Reference source not found. of Schedule 1</b>
ABN	As set out in item <b>Error! Reference source not found.</b> of Schedule 1
Short form name	<b>CR Party</b>
Notice details	A set out in item <b>Error! Reference source not found.</b> of Schedule 1

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## Background

- A The CR Party has requested Epic, and Epic has agreed, to undertake the Scope of Work in accordance with this Agreement.
- B The Scope of Work is to be undertaken for the SOW Purpose and will relate to and/or impact on the Pipeline System.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document:

**Approval** means an approval, declaration, authorisation, certificate, consent, exemption, filing, licence, notarisation, permit, registration, ruling, statutory required policy of insurance or waiver (and any renewal or variation of any of them) by or with an Authority, and includes any renewal of, or variation to, any of them.

**Assumptions** means the assumptions set out in section 6 of Schedule 2 (or which have otherwise been made by Epic and communicated to the CR Party).

**Authority** means:

- (a) any government or regulatory department, body, instrumentality, minister, agency or other authority;
- (b) any person exercising an authority granted to it under any Law; and
- (c) any body which is the successor to the administrative responsibilities of that department, body, instrumentality, minister, agency, authority or person.

**Business Day** means any day other than a Saturday, Sunday or public holiday in South Australia.

**Change in Taxes** means:

- (a) a change in (or a change in the application or official interpretation of) a Relevant Tax or the way in which a Relevant Tax is calculated;
- (b) the removal of a Relevant Tax; or
- (c) the imposition of a Relevant Tax,

after the Execution Date to the extent that the change, removal or imposition directly or indirectly:

- (d) applies to the performance of the Scope of Work by Epic or to goods or services supplied to Epic in respect of the performance of the Scope of Work; and
- (e) results in Epic incurring higher or lower costs in performance of the Scope of Work (as compared to the level of costs which Epic would have incurred in performance of the Scope of Work if that event had not occurred).

**Change of Law** means:

- (a) a change in (or a change in the application or interpretation of) a Law;
- (b) the repeal of a Law; or
- (c) the introduction of a Law,

after the Execution Date to the extent that the change, repeal or introduction directly or indirectly results in Epic incurring higher or lower costs in performance of the Scope of Work (as compared to the level of costs which Epic would have incurred in performing the Scope of Work if that event had not occurred).

**Claims** means all existing and future allegations, debts, actions, liabilities, suits, causes of action, proceedings, claims and demands of any nature (including by third parties).

**Commencement Date** means the date described in item 2 of Schedule 1.

**Confidential Information** means:

- (a) the terms of this Agreement;

- (b) any information, data and documents (whether in physical or electronic form) that one Party or any of its Related Bodies Corporate or Personnel discloses to the other Party or any of its Related Body Corporate or Personnel in relation to the SOW Purpose or any of the Scope of Work (whether or not that information was provided before or after the Execution Date).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CR Party Site** means a site described in item **Error! Reference source not found.** of Schedule 1.

**CR Party Work** means the work to be undertaken and information to be provided, by the CR Party as described in section 5 of Schedule 2

**Date of Completion** means the date that Epic completes the Scope of Work.

**Delivery Point(s)** means the delivery point(s) described in item **Error! Reference source not found.** of Schedule 1.

**Epic Charges** means all amounts to be paid to Epic as set out in, or to be determined in accordance with, Schedule 3.

**Epic IP** means all documents and Intellectual Property Rights created or developed by or on behalf of Epic or any of Epic's Personnel in connection with the Scope of Work and/or any Epic Output.

**Epic Liability Cap** means the liability cap described in section 4 of Schedule 3.

**Epic Outputs** means the documents (if any) that are to be produced by Epic and submitted to the CR Party as part of the Scope of Work, as described under the heading of 'Epic Outputs' in the Scope of Work.

**Excluded Loss** means any consequential losses including:

- (a) loss of profit, revenue, business or production;
- (b) loss or denial of opportunity;
- (c) loss of access to markets;
- (d) loss of or damage to goodwill, reputation or future reputation;
- (e) damage to credit rating;
- (f) loss of anticipated savings;
- (g) special, incidental or punitive damages; or
- (h) loss or damage arising from special circumstances that are outside the ordinary course of things,

however arising in respect of any circumstances under or in relation to this Agreement, and regardless of whether a Claim for same is made under this Agreement, in tort (including negligence), strict liability, under an indemnity or a warranty, in equity or otherwise, and whether or not foreseeable as at the Execution Date.

**Excluded Work** means the work described in section 4 of Schedule 2.

**Execution Date** means the date that the last of Epic and the CR Party to execute this Agreement does so.

**Force Majeure** means, in relation to a Party, any event or circumstance that is, or series of events or circumstances that are, beyond the reasonable control of that Party and which, by the exercise of Good Industry Practice, that Party is unable to reasonably prevent or overcome.

**Gas** means any hydrocarbons in a gaseous state and any mixture of one or more hydrocarbons in a gaseous state that may contain other gases (including the residue resulting from treatment or processing of natural gas).

**GJ** means gigajoule.

**Good Industry Practice** means, in relation to a Party, the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a significant proportion of persons carrying on the same, or a substantially similar, business to that carried on by that Party.

**GST** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GTA** means Gas transportation agreement.

**Intellectual Property Rights** means any patent, copyright, trade or service mark (whether registered or unregistered), business name, design, trade secret, know how or other form of intellectual property, or any right to register that intellectual property, whether arising before or after the Execution Date.

**Law** includes, from time to time, all applicable:

- (a) legislation, ordinances, regulations, by-laws, local laws, orders and proclamations;
- (b) Approvals;
- (c) principles of law or equity;
- (d) directions or notices issued by any Authority; and
- (e) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a) to (d) of this definition,

as amended from time to time, whether or not existing at the Execution Date.

**Long Lead Fees** means the actual costs and expenses incurred by Epic associated with:

- (a) ordering, purchasing and delivering any Long Lead Items; and
- (b) cancelling an order for, and returning, any Long Lead Items as a consequence of the termination of this Agreement.

**Long Lead Items** means the items (if any) described in item **Error! Reference source not found.** of Schedule 1.

**Losses** means losses, costs, damages, expenses and liabilities.

**Parties** means Epic and the CR Party, and **Party** means Epic or the CR Party (as applicable).

**Pipeline Licence** means the licence(s) described in Item 4 of Schedule 1 issued under the *Petroleum and Geothermal Energy Act 2000* (SA) as the licence(s) may be amended, varied, substituted or added to from time to time.

**Pipeline System** means the pipeline system described in item 3 of Schedule 1.

**Personnel** means officers, employees, agents, representatives, contractors and subcontractors.

**Refund Amount** means the amount (if any) specified as such in section 3 of Schedule 3.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Relevant Tax** means any tax imposed by or payable directly or indirectly to any Authority (including a goods and services tax), but excluding any:

- (a) income tax (or State equivalent income tax), fringe benefits tax or capital gains tax;
- (b) payroll tax;
- (c) stamp duty, financial institutions duty, bank accounts debits tax or similar taxes and duties;
- (d) penalties and interest for late payments relating to any tax; or
- (e) any tax that replaces any of the taxes referred to in (a) to (d).

**Scope of Work** means the work described in section 1 of Schedule 2 and the acquisition of any Long Lead Items.



**Security** means the security (if any) to be provided by the CR Party in accordance with Schedule 4.

**SOW Program** is the Scope of Work Program set out in section 3 of Schedule 2.

**SOW Purpose** means the purpose of the Scope of Work as described in section 2 of Schedule 2.

**Termination Amount** means the amount (if any) specified as such in section 3 of Schedule 3.

**Termination Date** means the date this Agreement is terminated in accordance with clause 8.1.

**WHS Requirements** means all laws and regulations (including the *Work Health and Safety Act 2012 (SA)* and *Work Health and Safety Regulations 2012 (SA)*), codes of practice or directions or notices issued under any law that relates to work health and safety that are applicable to the Scope of Work.

**Wilful Misconduct** means, in relation to a Party, any act or omission of that Party or any of its Personnel which:

- (a) was done or omitted to be done with deliberate, knowing or reckless disregard for its foreseeable, harmful and avoidable consequences;
- (b) not contemplated or permitted by this Agreement; and
- (c) was not an error of judgment, mistake or other act or omission (negligent or not) that was made in good faith.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to South Australia, Australia time;
- (g) a reference to a Party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

- (n) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### 1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

### 1.4 Standards

In this Agreement, terminology used to describe units will, unless otherwise stated, be in accordance with:

- (a) Australian Standard AS ISO 1000 – 1998, the international system of units (SI) and its application;
- (b) the *National Measurement Act 1960* (Cth) and the regulations under that Act;
- (c) AS/NZS 1376 - 1996 Conversion Factors; and
- (d) the Australian Gas Association publication *Metric Units and Conversion Factors for Use in the Australian Gas Industry*.

### 1.5 Rounding

- (a) Subject to clauses 1.5(b) and 1.5(c), any numerical calculation that results in more than four decimal places must be rounded to four decimal places by being rounded up, if the decimal place following the fourth decimal place is greater than or equal to 5, and rounded down, if the decimal place following the fourth decimal place is less than 5.
- (b) Any numerical calculation of a quantity of Gas must be rounded to the nearest GJ by being rounded up, if the first decimal place is greater than or equal to 5, and rounded down, if the first decimal place is less than 5.
- (c) Any numerical calculation of a dollar amount must be rounded to the nearest cent by being rounded up, if the next decimal place is greater than or equal to 5, and rounded down, if the next decimal place is less than 5.

## 2. Term

This Agreement will commence on the Execution Date and will continue until:

- (a) the Scope of Work is completed and the CR Party has paid all outstanding invoices issued to it by Epic in accordance with this Agreement; or
- (b) this Agreement is terminated in accordance with clause 8.1 or is otherwise lawfully terminated.

## 3. Scope of Work

### 3.1 Undertaking the Scope of Work

- (a) Epic will undertake the Scope of Work on and subject to the terms and conditions of this Agreement.
- (b) For clarity:
  - (i) the Scope of Work does not include the Excluded Work; and
  - (ii) Epic has no responsibility or liability whatsoever in relation to any of the Excluded Work.

### **3.2 Commencement**

Subject to clause 3.3(b), Epic will commence the Scope of Work on the Commencement Date.

### **3.3 SOW Program**

- (a) Subject to the remainder of this clause 3.3, Epic will use reasonable endeavours to undertake the Scope of Work in accordance with the SOW Program.
- (b) The CR Party acknowledges and agrees that the time periods identified in the SOW Program are Epic's best estimates only and may be updated by Epic from time to time for reasons including:
  - (i) changes in the Scope of Work;
  - (ii) any of the Assumptions are determined to be incorrect after the Execution Date;
  - (iii) any suspension of the Scope of Work;
  - (iv) any breach of this Agreement by the CR Party (including any failure to pay an invoice issued by Epic in accordance with clause 4.2);
  - (v) matters arising outside the control of Epic and which could not have been reasonably foreseen by Epic as at the Execution Date;
  - (vi) any delay in the performance of any of the CR Party Work or any Excluded Work, or any failure or delay by the CR Party in meeting any of its other obligations under this Agreement, which affects Epic's ability to progress the Scope of Work;
  - (vii) where a dispute arises in accordance with clause 8.3; and
  - (viii) where Epic suspends performance of the Scope of Work in accordance with clause 3.4.
- (c) Notwithstanding anything in this Agreement, the CR Party acknowledges and agrees that Epic will not be liable for any delay, or failure to undertake and complete the Scope of Work in accordance with the SOW Program.

### **3.4 Suspension of Scope of Work**

Epic may suspend performance of any of the Scope of Work:

- (a) if the CR Party fails to pay any invoice by the due date until payment is made by the CR Party; or
- (b) if a Dispute Notice is issued in accordance with clause 8.3(a).

### **3.5 CR Party Work**

The CR Party must undertake the CR Party Work in accordance with the Scope of Work and the SOW Program or as otherwise required by Epic so as to enable Epic to undertake the Scope of Work in accordance with the SOW Program.

### **3.6 Access to the CR Party Sites**

- (a) The CR Party and any relevant Related Body Corporate must:
  - (i) provide reasonable access to any the CR Party Site;
  - (ii) cooperate with Epic and any of Epic's Personnel, in arranging access to any the CR Party Site; and
  - (iii) provide Epic with any reasonable work, health and safety requirements of the CR Party or any relevant Related Body Corporate for any the CR Party Site, at least 10 Business Days' prior to Epic accessing any the CR Party Site.
- (b) Epic will comply and will ensure that its Personnel comply with:
  - (i) all WHS Requirements; and

- (ii) any work, health and safety requirements notified to it by the CR Party in accordance with clause 3.6(a)(iii).

## 4. Epic Charges and invoicing

### 4.1 Payment by the CR Party

The CR Party must pay all of the Epic Charges in accordance with this Agreement.

### 4.2 Invoicing and payment

- (a) Epic will submit invoices to the CR Party for the Epic Charges in accordance with Schedule 3.
- (b) The CR Party must pay Epic the amount of each invoice in accordance with Schedule 3.
- (c) All amounts payable by the CR Party under this Agreement must be paid to Epic without set-off by electronic funds transfer to a bank account nominated by Epic in writing.

### 4.3 Interest

The CR Party must pay interest on any amount due to Epic under this Agreement but not paid by the due date for payment under this Agreement where such interest will:

- (a) be calculated at the one-month Bank Bill Swap Rate (mid-rate column) specified by the Australian Stock Exchange on the first Business Day of the calendar month in which the due date for payment occurred, plus 2% per annum; and
- (b) accrue from day to day on and from the date when the amount was due for payment until, but not including, the date the payment is made.

## 5. Security

If requested by Epic, the CR Party must provide Security in accordance with Schedule 4.

## 6. Gas Transportation Agreement

### 6.1 Giving effect to SOW Purpose or Scope of Work

- (a) The CR Party acknowledges that Epic may only be able to give effect to the SOW Purpose or the Scope of Work through:
  - (i) the negotiation of any agreement with the CR Party that will form an Epic Output;
  - (ii) amendments to an existing GTA with the CR Party or the negotiation of a new GTA with the CR Party; and / or
  - (iii) negotiations with a third party to:
    - (A) amend its existing GTA or enter into a new GTA with Epic; and/or
    - (B) enter into another agreement with Epic necessary to give effect to the SOW Purpose.
- (b) Epic and the CR Party agree to enter into good faith negotiations where clause 6.1(a)(i) and/or clause 6.1(a)(ii) applies with a view to reaching agreement on the necessary content of, or amendments to, the relevant document(s).
- (c) Despite the earlier provisions of this clause **Error! Reference source not found.**, the CR Party and Epic acknowledge and agree that nothing in this Agreement obliges Epic to:
  - (i) enter into any agreement with the CR Party that will form an Epic Output (unless that agreement is on terms acceptable to Epic (acting reasonably));

- (ii) agree to amend an existing GTA with the CR Party or negotiate a new GTA with the CR Party;
- (iii) in relation to a third party:
  - (A) agree to amend an existing GTA or enter into a new GTA; and / or
  - (B) enter into another agreement necessary to give effect to the SOW Purpose;
- (iv) give effect to any findings or recommendations set out in any Epic Output; or
- (v) commit to any further work relating to the SOW Purpose or the Scope of Work.

## 6.2 Isolation of Delivery Point(s)

[Drafting note: If this clause 6.2 is not applicable, then delete this heading and insert 'Not used', delete the whole of the clause below, and insert 'Not applicable' in item **Error! Reference source not found.** in Schedule 1]

The Parties acknowledge and agree that:

- (a) the Scope of Work involves isolating the Delivery Point(s);
- (b) the isolation of the Delivery Point(s) will be taken to be agreed by the Parties in accordance with the relevant provisions of the GTA; and
- (c) any interruption to supply at the Delivery Point(s) in connection with this clause 6.2, will not be counted in calculating or determining any period of time allowed or permitted to Epic under the GTA for carrying out maintenance or repairs.

## 7. Intellectual Property and Confidential Information

### 7.1 Intellectual Property

- (a) The CR Party acknowledges and agrees that Epic IP will remain the property of Epic.
- (b) Epic will grant the CR Party a perpetual, irrevocable royalty free licence to use the Epic IP for the purpose of the SOW Purpose.
- (c) The CR Party must only use the Epic IP for the SOW Purpose.

### 7.2 Confidential Information

- (a) The Confidential Information provided by one Party (**Discloser**) to the other Party (**Recipient**) must be kept confidential by the Recipient.
- (b) Confidential Information may not be disclosed by the Recipient to any person except:
  - (i) with the consent of the Discloser (which is not to be unreasonably withheld);
  - (ii) to the extent required by law or the rules of any stock exchange applicable to the Recipient;
  - (iii) if and to the extent that it may be necessary to disclose it to any government agency in connection with applications for licences, consents, approvals or authorities in relation to this Agreement;
  - (iv) in connection with legal proceedings relating to this Agreement, the SOW Purpose or the Scope of Work;
  - (v) if the information is generally and publicly available (other than by breach of this Agreement);
  - (vi) to an insurer for the purposes of effecting or maintaining policies of insurance required by this Agreement;
  - (vii) to an existing or proposed financier of the Recipient, or to a proposed assignee, transferee or sub participant of such financier;

- (viii) to bona fide potential purchasers of a holding company of the Recipient;
- (ix) to independent consultants, professional advisers, or Personnel of the Recipient, whose duties reasonably require such disclosure; or
- (x) to professional advisers of the Recipient who are bound to the Recipient by a duty of confidence which applies to any information disclosed,

provided that (other than in the cases referred to in clauses 7.2(b)(ii) and 7.2(b)(iii), such persons have:

- (xi) a need to know the Confidential Information; and
  - (xii) an obligation to keep the Confidential Information confidential.
- (c) The CR Party and Epic agree that notwithstanding anything in this clause 7.2, Epic may use and disclose Confidential Information in relation to access procedures under the arbitration regime for access disputes pursuant to the Schedule to the *National Gas (South Australia) Act 2008* (SA), provided that Epic, where Epic is the Recipient, in making any such disclosures takes all reasonable measures to:
- (i) preserve the confidentiality of that Confidential Information; and
  - (ii) ensure the recipient(s) of the Confidential Information use that Confidential Information only for the purposes of that access procedure.
- (d) This clause 7.2 will survive a period of two years after the Date of Completion or, where this Agreement is terminated earlier, the date that this Agreement terminates.

## 8. Termination and disputes

### 8.1 Termination of Agreement

Either Party may terminate this Agreement by giving at least 10 Business Days' prior written notice to the other Party.

### 8.2 Effect of termination

- (a) If this Agreement is terminated under clause 8.1 or is otherwise lawfully terminated, Epic must use reasonable endeavours to:
- (i) cancel any contract with a third party supplier or consultant relating to undertaking any of the Scope of Work;
  - (ii) cancel any orders for Long Lead Items; and
  - (iii) minimise any costs payable as a result of any such cancellation.
- (b) If this Agreement is terminated:
- (i) the CR Party will pay Epic the Termination Amount (if applicable); or
  - (ii) Epic will pay the CR Party the Refund Amount (if applicable).

### 8.3 Disputes

- (a) Any dispute in connection with this Agreement (**Dispute**) must be notified in writing by either Party to the other Party (**Dispute Notice**).
- (b) A Dispute Notice must set out details of the Dispute.
- (c) Within 10 Business Days of delivery of a Dispute Notice, representatives of each Party must meet to attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within a further 5 Business Days, then the Dispute must be referred to senior executives of the Parties who must meet to attempt to resolve the dispute.

- (e) No Dispute may be referred to litigation before the procedures in clauses 8.3(a) to 8.3(d) (inclusive) have been undertaken.
- (f) The Parties may agree that a Dispute concerning a fact, matter or thing other than the legal obligations or rights of the Parties under this Agreement, may be referred to expert determination for resolution.
- (g) If clause 8.3(f) applies:
  - (i) the Parties must agree upon an appropriately qualified independent person (**Expert**) to determine the dispute; but
  - (ii) if the Parties cannot agree on such appointment within 10 Business Days of agreement to resolve the matter by expert determination, the Expert will be appointed by the President (or his/her nominee) of the South Australian Chapter of the Resolution Institute.
- (h) The Expert must determine the procedure for the resolution of the Dispute and must fix and inform the Parties of a time for presentation to the Expert by the Parties of their respective positions.
- (i) The Expert will act as an expert and not as an arbitrator and must make a determination or finding in respect of the Dispute within 20 Business Days after presentation by the Parties.
- (j) Any determination of a Dispute by the Expert:
  - (i) must include a determination as to the award of costs; and
  - (ii) will be final and binding on the Parties.
- (k) The Parties must share equally the costs of the Expert.
- (l) The Parties must continue to perform their obligations under this Agreement, including the payment of all amounts due under this Agreement, despite the existence of a Dispute.
- (m) Nothing in this Agreement will prejudice the right of a Party to commence proceedings to enforce payment due under this Agreement or to seek urgent injunctive or declaratory relief in respect of any matter arising in connection with this Agreement.

## 9. Liability

### 9.1 Liability cap

Subject to clauses 9.2, 9.3 and 9.4, to the maximum extent permitted by law, Epic's liability to the CR Party under or in connection with this Agreement is limited to the Epic Liability Cap, and the CR Party releases Epic from any liability above the Epic Liability Cap.

### 9.2 Release

The CR Party:

- (a) releases and holds harmless Epic from all Claims arising in relation to or in connection with this Agreement, the SOW Purpose or the Scope of Work; and
- (b) indemnifies Epic and Epic's Personnel, from and against all Losses arising from any such Claim,

except if and to the extent (if any) caused by the negligence or Wilful Misconduct of, or material breach of this Agreement by, Epic.

### 9.3 Excluded Losses

- (a) Subject to clause 9.3(b), to the maximum extent permitted by law:
  - (i) neither Party is liable to the other Party for any Excluded Loss suffered or incurred by that other Party; and

- (ii) each Party covenants with the other Party that it will not make or enforce any Claim in respect of any Excluded Loss against the other Party.
- (b) Nothing in clause 9.3(a) excludes or limits the CR Party's liability:
  - (i) to the extent that the CR Party is required by this Agreement to have insurance in respect of that liability; or
  - (ii) to the extent that the CR Party recovers any amount for which it is liable under this Agreement from a contractor or third party.

## 9.4 Limitation of liability

Notwithstanding anything in this Agreement, Epic will have no liability to the CR Party for any Losses suffered or incurred as a result of the CR Party providing untrue, inaccurate, misleading or incomplete information to Epic.

## 10. GST

### 10.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the Party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 10 days of the receipt of a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

### 10.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

### 10.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the Parties.

## 11. Miscellaneous

### 11.1 Force Majeure

If a Party is prevented from or delayed in performing an obligation (other than a payment obligation) by Force Majeure, and promptly notifies the other Party and acts to mitigate or remove the Force Majeure and its effect, then the obligation is suspended during, but for no longer than, the period that the Force Majeure continues and any further period that is reasonable in the circumstances.

### 11.2 No assignment

A Party must not assign, novate or purport to assign or novate any of its rights under this Agreement without the prior written consent of the other Party (which must not be unreasonably withheld).

### 11.3 Costs

Each Party must pay its own legal and other costs associated with the preparation, negotiation and execution of this Agreement.



## 11.4 Notices

Any notice, demand, consent or other communication (**Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address set out in the Details to this Agreement or the address or email address last notified by the intended recipient to the sender.
- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, 5 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of email, the earlier of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
    - (C) 2 hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that 2 hour period, an automated message that the email has not been delivered,but if the result is that a Notice would be taken to be given or made:
    - (iv) in the case of delivery by hand or post, at a time that is later than 5pm;
    - (v) in the case of delivery by email, at a time that is later than 5pm; or
    - (vi) on a day that is not a Business Day,in the place specified by the intended recipient as its postal address under clause 11.4(b), it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

## 11.5 Subcontracting

- (a) The CR Party acknowledges that Epic may sub-contract the performance of the whole or any part of the Scope of Work.
- (b) Notwithstanding the right to sub-contract, any subcontract entered into by Epic will not relieve Epic from any obligation under this Agreement and will not create or impose any obligation or liability on the CR Party.

## 11.6 Amendment

This Agreement may only be amended in writing and signed by both Parties

## 11.7 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes and extinguishes any representations, warranties and agreements previously given, made or entered into other than those contained in this Agreement.

## 11.8 Non-waiver

- (a) A waiver of any provision of or right under this Agreement:
- (b) must be in writing signed by the Party entitled to the benefit of that provision or right; and

- (c) is effective only to the extent set out in the written waiver.

### **11.9 Severance**

- (a) Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

### **11.10 Survival of clauses**

This clause and clauses 4, 7, 9 and 10 survive the termination or repudiation of this Agreement.

### **11.11 Law**

- (a) This Agreement is governed by and construed with reference to the law for the time being in force in South Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in South Australia.

### **11.12 Exclusion of implied conditions and warranties**

The Parties acknowledge and agree that in the performance of this Agreement all implied conditions and warranties are excluded, except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this Agreement to be void.

### **11.13 No limit in breach of statute**

Nothing in this Agreement excludes or limits the application of any provision of any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would:

- (a) contravene that statute; or
- (b) cause any part of this Agreement to be void.

### **11.14 No partnership or joint venture**

- (a) Epic is engaged by the CR Party as an independent contractor.
- (b) This Agreement is not intended to, and does not, create a partnership, joint venture or agency relationship between the Parties.

### **11.15 Counterparts and electronic execution**

- (a) This Agreement may be executed in any number of counterparts.
- (b) Each counterpart constitutes an original of this Agreement, and all counterparts together will be taken to constitute one instrument.
- (c) Each Party:
  - (i) consents to this Agreement being executed electronically by any method (including by signing on an electronic device, electronic signing platform or by digital signature) and existing in electronic form; and
  - (ii) agrees that:
  - (iii) electronic signature and the method used is a legally valid and binding method of execution; and
  - (iv) electronic signature is conclusive as to the identity of a Party and their intention to be bound as if signed by that Party's (or any of its duly authorised signatory's) manuscript signature.

# Schedule 1 – Particulars

Item	Term	Meaning
1.	CR Party	Name: [insert] ABN: [insert] Address: [insert] Email: [insert] Attention: [insert]
2.	Commencement Date	[insert]
3.	Pipeline System	[insert name of pipeline system]
4.	Pipeline Licence	[Delete whichever is not applicable] Licence number 1 [If MAPS] Licence Numbers 3 and 4 [If SEPS]
5.	CR Party Site(s)	[insert description of each CR Party site and whether or not that site is owned, operated or controlled by a Related Body Corporate of the CR Party]
6.	Delivery Point(s)	[insert the description of the Delivery Point(s) that may be impacted by the Scope of Work]
7.	Long Lead Items	[insert description]

# Schedule 2 – Scope of Work

## 1. Scope of Work (SOW)

### 1.1 Scope of Work other than Epic Outputs

[insert detailed description of the scope of work to be undertaken by Epic, other than the Epic Outputs]

### 1.2 Epic Outputs

[insert description of the documents that are to be produced by Epic and submitted to the CR Party as part of the Scope of Work]

## 2. SOW Purpose

[insert description of the reason why the Scope of Work is being undertaken]

## 3. SOW Program

[insert the program / timetable for undertaking the Scope of Work (including the CR Party Work)]

## 4. Excluded Work

### 4.1 [insert relevant heading]

[insert description of work that is excluded from the Scope of Work]

### 4.2 [insert relevant heading]

[insert description of work that is excluded from the Scope of Work]

## 5. CR Party Work

[insert description of any work to be undertaken by the CR Party or information to be provided by the CR Party]

## 6. Assumptions

[insert assumptions relating to the Scope of Work]

# Schedule 3 – Charges

[Drafting note – delete the two options in this Schedule that are not applicable]

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## [Option 1 – Prepayment and payment of all incurred Epic Costs ]

### 1. Definitions

In this Schedule 3:

**CR Party Prepayment** means \$[insert].

**Epic Costs** means all costs and expenses incurred by Epic relating to performance of the Scope of Work (including allowances for Epic's overheads and all Long Lead Fees).

**Epic Costs Estimate** means Epic's initial estimate of the Epic Costs (including, where applicable, any Long Lead Fees) set out in section 5 of this Schedule 3 (as updated in accordance with section 2.1 of this Schedule 3).

**Epic Costs Margin** means the margin described in section 6 of this Schedule 3.

**Final Payment Claim** means the final payment claim issued to the CR Party in accordance with section 2.2(b) of this Schedule 3.

### 2. Epic Costs and Invoicing

#### 2.1 Epic Costs

- (a) The CR Party must pay all of the Epic Costs in accordance with this Schedule 3.
- (b) The CR Party acknowledges and agrees that the Epic Costs Estimate:
  - (i) is merely an indicative estimate of the Epic Costs for the CR Party's benefit; and
  - (ii) may change.
- (c) The CR Party acknowledges that circumstances which may result in the Epic Costs exceeding the Epic Costs Estimate include:
  - (i) changes in the Scope of Work;
  - (ii) any of the Assumptions are determined to be incorrect after the Execution Date;
  - (iii) any suspension of the Scope of Work;
  - (iv) any breach of this Agreement by the CR Party;
  - (v) matters arising outside the control of Epic and which could not have been reasonably foreseen by Epic as at the Execution Date;
  - (vi) where the CR Party is delayed in the performance of the CR Party Work, or any Excluded Work or any failure or delay by the CR Party in meeting any of its other obligations under this Agreement which affects Epic's ability to progress the Scope of Work;
  - (vii) where Epic suspends performance of the Scope of Work in accordance with clause 3.4; and
  - (viii) the existence of a Change of Law or Change in Taxes.

- (d) If Epic becomes aware that the Epic Costs may exceed the Epic Costs Estimate by more than the Epic Costs Margin, Epic must, as soon as reasonably practicable, notify the CR Party of the updated Epic Costs Estimate.
- (e) Any delay by Epic in notifying the CR Party in accordance with section 2.1(d) of this Schedule 3, will not relieve the CR Party of its obligation to pay the Epic Costs in accordance with this Agreement.

## 2.2 Invoicing and payment

- (a) The CR Party must pay Epic the CR Party Prepayment within 5 Business Days after receipt of a tax invoice from Epic for that amount.
- (b) Within 10 Business Days after the Date of Completion, Epic will issue to the CR Party a Final Payment Claim which:
  - (i) includes all payment claims that Epic has against the CR Party under or arising out of or in connection with this Agreement; and
  - (ii) accounts for all Epic Costs incurred by Epic in connection with this Agreement.
- (c) If the Final Payment Claim indicates that the total Epic Costs are:
  - (i) greater than the CR Party Prepayment, then the CR Party must pay to Epic the difference between the total Epic Costs and the CR Party Prepayment within 10 Business Days of receiving a tax invoice from Epic for that amount; or
  - (ii) less than the CR Party Prepayment, then Epic will refund to the CR Party the difference between the CR Party Prepayment and the total Epic Costs.
- (d) The CR Party acknowledges and agrees that the issuing of a Final Payment Claim by Epic will not:
  - (i) prevent or bar Epic from making any payment claims relating to the Scope of Work that were not made in the Final Payment Claim; or
  - (ii) reduce or limit in any way or to any extent the obligation of the CR Party to pay the amount of any such payment claims.

## 3. Termination Amount or Refund Amount

If this Agreement is terminated and, and the date of termination:

- (a) the Epic Costs (including any costs and expenses incurred in relation to Long Lead Items and any costs and expenses associated with the early termination of this Agreement) exceed the CR Party Prepayment, the CR Party must pay to Epic the difference between the Epic Costs and the CR Party Prepayment (**Termination Amount**) within 5 Business Days after receipt of a tax invoice from Epic for that amount; or
- (b) the CR Party Prepayment exceeds the Epic Costs (including any costs and expenses incurred in relation to Long Lead Items and any costs and expenses associated with the early termination of this Agreement), Epic will refund to the CR Party the difference between the CR Party Prepayment and the Epic Costs (**Refund Amount**).

## 4. Epic Liability Cap

[Drafting note: this liability cap can be expressed as a \$ amount (i.e. delete the text below under each heading and replace it with 'The Epic Liability Cap is \$[insert] )

The Epic Liability Cap is determined as follows:

- (a) at any point in time an amount equal to:
  - (i) the Epic Costs at that point in time; less

- (ii) all amounts (if any) that Epic has already paid, or are payable, to the CR Party in respect of previously incurred liabilities under this Agreement; and
- (b) for clarity, Epic's maximum aggregate liability to the CR Party under or in connection with this Agreement is limited to an amount equal to the Epic Costs.

## 5. Epic Costs Estimate

### 5.1 Epic Costs (other than Long Lead Fees)

- (a) [insert details of the Epic Costs Estimate]

### 5.2 Long Lead Fees

- (a) [insert details of the estimated Long Lead Fees]

## 6. Epic Costs Margin

[insert details of the Epic Costs Margin]

## [Option 2 – Fixed Fee ]

### 1. Definitions

In this Schedule 3:

**Epic Fee** means a fixed fee of \$[insert amount] (but does not include any Long Lead Fees).

**Fee Amendment Amount** means an amount determined by Epic in accordance with section 2.2(a) of this Schedule 3.

**Fee Amendment Trigger** means any of the following events which result in additional costs or expenses being incurred by Epic in undertaking the Scope of Work:

- (a) changes in the Scope of Work;
- (b) any of the Assumptions are determined to be incorrect after the Execution Date;
- (c) any suspension of the Scope of Work;
- (d) any breach of this Agreement by the CR Party;
- (e) matters arising outside the control of Epic and which could not have been reasonably foreseen by Epic as at the Execution Date;
- (f) where the CR Party is delayed in the performance of the CR Party Work, or any Excluded Work or any failure or delay by the CR Party in meeting any of its other obligations under this Agreement which affects Epic's ability to progress the Scope of Work;
- (g) where Epic suspends performance of the Scope of Work in accordance with clause 3.4; and
- (h) the occurrence of a Change of Law or Change in Taxes.

### 2. Fees and invoicing

#### 2.1 Fees

The CR Party must pay:

- (a) the Epic Fee;
- (b) any Fee Amendment Amount; and

- (c) any Long Lead Fees,  
as invoiced in accordance with this Schedule 3.

## 2.2 Fee Amendment Trigger

- (a) Where a Fee Amendment Trigger occurs or is likely to occur, Epic will:
  - (i) review the Epic Fee and determine the amount that will be deducted from or added to (as applicable) the Epic Fee (the **Fee Amendment Amount**); and
  - (ii) notify the CR Party of the Fee Amendment Amount.
- (b) Upon receiving notification in accordance with section 2.2(a)(ii) of this Schedule 3, the CR Party may:
  - (i) notify Epic to proceed, or continue, with the Scope of Work and that it will pay the Fee Amendment Amount in accordance with this Schedule 3; or
  - (ii) terminate this Agreement, in which case clause 8.2 will apply.
- (c) Where the CR Party notifies Epic to proceed, or continue, with the Scope of Work in accordance with section 2.2(b)(i) of this Schedule 3, Epic will, if the Fee Amendment Amount:
  - (i) increases the Epic Fee, invoice the CR Party for the Fee Amendment Amount; or
  - (ii) decreases the Epic Fee, refund to the CR Party the Fee Amendment Amount.

## 2.3 Invoicing and payment

The CR Party must pay Epic:

- (a) the Epic Fee;
- (b) any Fee Amendment Amount; and
- (c) any Long Lead Fees,

within 5 Business Days after receipt of a tax invoice for the relevant amount from Epic.

## 3. Termination Amount or Refund Amount

- (a) Subject to section 3(d) of this Schedule 3, where this Agreement is terminated, Epic will calculate an amount equal to:
  - (i) the costs and expenses relating to performance of the Scope of Work incurred by Epic at the date this Agreement is terminated (including allowances for Epic's overheads, any Long Lead Fees and any costs and expenses associated with the early termination of this Agreement); less
  - (ii) any amounts already paid by the CR Party in accordance with section 2 of this Schedule 3; less
  - (iii) any amounts refunded to the CR Party by Epic in accordance with section 2.2(c)(ii) of this Schedule 3.
- (b) Where the amount calculated in accordance with section 3(a) of this Schedule 3 is positive, that amount will be the Termination Amount.
- (c) Where the amount calculated in accordance with section 3(a) of this Schedule 3 is negative, that amount will be the Refund Amount which Epic will refund to the CR Party.
- (d) Subject to section 3(e) of this Schedule 3, where this Agreement is terminated as a result of a Fee Amendment Trigger that is a breach of this Agreement by the CR Party, the Termination Amount will be an amount equal to:
  - (i) the Epic Fee plus all incurred Long Lead Fees; less



- (ii) any amounts already paid by the CR Party in accordance with section 2 of this Schedule 3; less
- (iii) any amounts refunded to the CR Party by Epic in accordance with section 2.2(c)(ii) of this Schedule 3.
- (e) Where the Termination Amount calculated in accordance with section 3(d) of this Schedule 3 is a negative amount, the Termination Amount will be nil and the Refund Amount will be nil.
- (f) Where a Termination Amount is payable, Epic will issue the CR Party with a tax invoice for the Termination Amount which must be paid by the CR Party within 5 Business Days after its receipt.

#### 4. Epic Liability Cap

[Drafting note: this liability cap can be expressed as a \$ amount (i.e. delete the text below under each heading and replace it with 'The Epic Liability Cap is \$[insert].')]

The Epic Liability Cap is determined as follows:

- (a) at any point in time an amount equal to:
  - (i) such proportion of the Epic Fee that relates to that part of the Scope of Work (excluding Long Lead Items) that has been carried out at that point in time; plus
  - (ii) all Long Lead Fees that Epic has incurred at that time; less
  - (iii) all amounts (if any) that Epic has already paid, or are payable, to the CR Party in respect of previously incurred liabilities under this Agreement; and
- (b) for clarity, Epic's maximum aggregate liability to the CR Party under or in connection with this Agreement is limited to an amount equal to the sum of the Epic Fee and any Long Lead Fees.

### [Option 3 – Agreed billing program with Fixed Fee and possible Prepayment]

#### 1. Definitions

In this Schedule 3:

**CR Party Prepayment** means \$[insert] [Drafting note – if there is to be no CR Party Prepayment insert 'nil'].

**Epic Fee** means the fixed fee of \$[insert amount] (but does not include any Long Lead Fees).

**Fee Amendment Amount** means an amount determined by Epic in accordance with section 2.2(a) of this Schedule 3.

**Fee Amendment Trigger** means any of the following events which result in additional costs or expenses being incurred by Epic in undertaking the Scope of Work:

- (a) changes in the Scope of Work;
- (b) any of the Assumptions are determined to be incorrect after the Execution Date;
- (c) any suspension of the Scope of Work;
- (d) any breach of this Agreement by the CR Party;
- (e) matters arising outside the control of Epic and which could not have been reasonably foreseen by Epic as at the Execution Date;

- (f) where the CR Party is delayed in the performance of the CR Party Work, or any Excluded Work or any failure or delay by the CR Party in meeting any of its other obligations under this Agreement which affects Epic's ability to progress the Scope of Work;
- (g) where Epic suspends performance of the Scope of Work in accordance with clause 3.4; and
- (h) the occurrence of a Change of Law or Change in Taxes.

## 2. Fees and invoicing

### 2.1 Fees

The CR Party must pay:

- (a) the CR Party Prepayment;
- (b) an amount equal to the Epic Fee minus the CR Party Prepayment in [insert details]  
**Drafting note: for example, this might be [X] equal instalments of [\$Y] each;**
- (c) any Fee Amendment Amount;
- (d) any Long Lead Fees,

as invoiced in accordance with this Schedule 3.

### 2.2 Fee Amendment Trigger

- (a) Where a Fee Amendment Trigger occurs or is likely to occur, Epic will:
  - (i) review the Epic Fee and determine the amount that will be deducted from or added to (as applicable) the Epic Fee (the **Fee Amendment Amount**); and
  - (ii) notify the CR Party of the Fee Amendment Amount.
- (b) Upon receiving notification in accordance with section 2.2(a)(ii) of this Schedule 3, the CR Party may:
  - (i) notify Epic to proceed, or continue with, the Scope of Work and that it will pay the Fee Amendment Amount in accordance with this Schedule 3; or
  - (ii) terminate this Agreement, in which case clause 8.2 will apply.
- (c) Where the CR Party notifies Epic to proceed, or continue with, the Scope of Work in accordance with section 2.2(b)(i) of this Schedule 3, Epic will, if the Fee Amendment Amount:
  - (i) increases the Epic Fee, invoice the CR Party for the Fee Amendment Amount; or
  - (ii) decreases the Epic Fee, refund to the CR Party the Fee Amendment Amount.

### 2.3 Invoicing and payment

The CR Party must pay Epic:

- (a) the CR Party Prepayment;
- (b) each amount payable under section 2.1(b) of this Schedule 3;
- (c) any Fee Amendment Amount; and
- (d) any Long Lead Fees,

within 5 Business Days after receipt of a tax invoice for the relevant amount from Epic.

## 3. Termination Amount or Refund Amount

- (a) Subject to section 3(d) of this Schedule 3, where this Agreement is terminated, Epic will calculate an amount equal to:

- (i) the costs and expenses relating to performance of the Scope of Work incurred by Epic at the date this Agreement is terminated (including allowances for Epic's overheads, any Long Lead Fees and any costs and expenses associated with the early termination of this Agreement); less
  - (ii) the CR Party Prepayment (if any); less
  - (iii) any other amounts already paid by the CR Party in accordance with section 2.3 of this Schedule 3; less
  - (iv) any amounts refunded to the CR Party by Epic in accordance with section 2.2(c)(ii) of this Schedule 3.
- (b) Where the amount calculated in accordance with section 3(a) of this Schedule 3 is positive, that amount will be the Termination Amount.
- (c) Where the amount calculated in accordance with section 3(a) of this Schedule 3 is negative, that amount will be the Refund Amount which Epic will refund to the CR Party.
- (d) Subject to section 3(e) of this Schedule 3, where this Agreement is terminated as a result of a Fee Amendment Trigger that is a breach of this Agreement by the CR Party, the Termination Amount will be an amount equal to:
- (i) the Epic Fee plus all incurred Long Lead Fees; less
  - (ii) the CR Party Prepayment (if any); less
  - (iii) any other amounts already paid by the CR Party in accordance with section 2 of this Schedule 3; less
  - (iv) any amounts refunded to the CR Party by Epic in accordance with section 2.2(c)(ii) of this Schedule 3.
- (e) Where the Termination Amount calculated in accordance with section 3(d) of this Schedule 3 is a negative amount, the Termination Amount will be nil and the Refund Amount will be nil.

#### 4. Epic Liability Cap

[Drafting note: this liability cap can be expressed as a \$ amount (i.e. deleted the text below under each heading and replace it with 'The Epic Liability Cap is \$[insert].']

The Epic Liability Cap is determined as follows:

- (a) at any point in time an amount equal to:
  - (i) such proportion of the Epic Fee that relates to that part of the Scope of Work (excluding Long Lead Items) that has been carried out by Epic at that point in time; plus
  - (ii) all Long Lead Fees that Epic has incurred at that time; less
  - (iii) all amounts (if any) that Epic has already paid, or are payable, to the CR Party in respect of previously incurred liabilities under this Agreement; and
- (b) for clarity, Epic's maximum aggregate liability to the CR Party under or in connection with this Agreement is limited to an amount equal to the sum of the Epic Fee and any Long Lead Fees.

# Schedule 4 – Security

## 1. Request for Security

- (a) The CR Party must provide the security (if any) described in section 1(b) of this Schedule 4 (**Security**) by the date (if any) stipulated in section 1(c) of this Schedule 4 as security for the performance by the CR Party of its obligations under this Agreement.
- (b) The Security is [insert NOT APPLICABLE if there is to be no Security and delete the following options] OR [delete whichever of the following two options is not applicable] [an irrevocable and unconditional bank guarantee in favour of Epic for an amount of \$[insert] payable on demand:
  - (i) issued by an Australian trading bank registered pursuant to the *Banking Act 1959* or an insurer; and
  - (ii) in a form,  
acceptable to Epic in its absolute discretion] OR [a cash deposit for an amount of \$[insert] to be held by Epic].
- (c) The CR Party must provide the Security to Epic by [insert NOT APPLICABLE if there is to be no Security] OR [insert date].

## 2. Drawing on Security

Epic may draw on the Security at any time to pay any outstanding amounts owed by the CR Party at that time.

## 3. Release of Security

The Security (or such part of it as remains undrawn) provided by the CR Party will be released by Epic within 10 Business Days after the CR Party has paid in full all amounts invoiced by Epic in accordance with this Agreement.

## 4. Replacement Security

- (a) Where the Security is in the form of a bank guarantee and it has an expiry date, the CR Party must, no later than 10 Business Days before that expiry date, procure the issue of a replacement bank guarantee that complies with this Schedule 4.
- (b) If the CR Party fails to provide a replacement bank guarantee in accordance with section 4(a) of this Schedule 4, Epic may:
  - (i) terminate this Agreement; and
  - (ii) draw on the bank guarantee already held to pay any outstanding amounts owed by the CR Party to Epic and hold the balance (if any) on trust for a reasonable period of time as determined by Epic.

# Signing page

**EXECUTED** as an agreement.

**Executed** for and on behalf of **Epic Energy South Australia Pty Ltd** by its authorised officer in the presence of:

\_\_\_\_\_

Signature of witness

\_\_\_\_\_

Signature of authorised officer

\_\_\_\_\_

Name of witness (print)

\_\_\_\_\_

Name of authorised officer (print)

**Executed** for and on behalf of **[insert]** by its authorised officer in the presence of:

\_\_\_\_\_

Signature of witness

\_\_\_\_\_

Signature of authorised officer

\_\_\_\_\_

Name of witness (print)

\_\_\_\_\_

Name of authorised officer (print)